

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION**

<b>IN RE:</b>	§	
	§	
<b>SAND HILL FOUNDATION, LLC</b>	§	CASE NO. 10-90209
xx-xxx2704	§	
P.O. Box 1661, Center, TX 75935	§	
	§	
<b>SAND HILL PANOLA SWD #2 LLC</b>	§	CASE NO. 10-90210
xx-xxx0136	§	
P.O. Box 837, Center, TX 75935	§	
	§	
<b>SAND HILL PANOLA SWD #5 LLC</b>	§	CASE NO. 10-90211
xx-xxx0409	§	
P.O. Box 837, Center, TX 75935	§	
	§	
	§	<b>JOINTLY ADMINISTERED</b>
	§	<b>under 10-90209</b>
Debtors	§	Chapter 11

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**DISCLOSURE STATEMENT IN SUPPORT OF  
CONSOLIDATED PLAN OF REORGANIZATION OF DEBTORS  
SAND HILL FOUNDATION, LLC,  
SAND HILL PANOLA SWD #2 LLC,  
AND SAND HILL PANOLA SWD #5 LLC**

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**THIS DISCLOSURE STATEMENT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING TRANSMITTED TO YOU IN CONNECTION WITH THE DEBTOR'S REQUEST THAT IT BE APPROVED BY THE BANKRUPTCY COURT. THE TRANSMISSION OF THIS DISCLOSURE STATEMENT TO YOU AT THIS TIME IS NOT A SOLICITATION OF YOUR VOTE ON THE DEBTOR'S PLAN. ONCE THIS DISCLOSURE STATEMENT IS APPROVED, YOU WILL RECEIVE TO THE EXTENT YOU ARE ENTITLED TO VOTE ON THE DEBTOR'S PLAN, AN APPROVED DISCLOSURE STATEMENT, DEBTOR'S PLAN OF REORGANIZATION AND A BALLOT.**

**Jeffrey Wells Oppel  
Texas Bar No. 15291800  
OPPEL & GOLDBERG, P.L.L.C.  
1010 Lamar, Suite 1420  
Houston, Texas 77002  
713-659-9200  
713-659-9300 Fax**

**DATED: March 28, 2011**

**ATTORNEYS FOR DEBTORS**

## TABLE OF CONTENTS

I. INTRODUCTION	1
A. Purpose of the Disclosure Statement	1
B. Summary of Entities Entitled to Vote On the Plan and Of Certain Requirements Necessary For Confirmation of the Plan	2
C. Voting Procedures, Balloting Deadline, Confirmation Hearing, And Other Important Dates, Deadlines And Procedures	2
1. Voting Procedures and Deadlines	2
2. Waivers of Defects and Other Irregularities Regarding Ballots	3
3. Date Of The Confirmation Hearing And Deadlines For Objection To Confirmation Of The Plan.	3
4. Important Notice and Cautionary Statement	4
5. Additional Information	4
II. BACKGROUND OF DEBTORS' BUSINESSES	5
A. Company History	5
B. Events Leading to Bankruptcy	5
C. Historical Financial Information	6
D. Financing of the Debtors	6
III. POSTPETITION EVENTS	6
A. Administration of the Case	6
B. Creditors Committee	7
D. First Meeting of Creditors	7
E. Schedules and Statement of Financial Affairs	7
F. Executory Contracts	7
G. Rejection of Contracts and Leases	8
H. Significant Post-Petition Activities	8
I. Sale of Water Disposal Assets	8
J. Bass Settlement	9
IV. ASSETS OF THE DEBTORS	10
1. Cash Proceeds From Sale of Water Disposal Assets	10
2. Retained Assets	10
3. Preference and Other Avoidance Litigation	10
V. SUMMARY OF THE PLAN	10
A. Overview of Chapter 11	11
B. Plan of Reorganization/Liquidation	11
C. Bar Date for Filing Proofs of Claim	11
D. Classification and Treatment of Claims	11
1. Unclassified Claims	11
(a) Unpaid Administrative Expense Claims	11
(i) Generally	12
(ii) Payment of Administrative Claims, Professional Fee Claims, and Priority Unsecured Tax Claims	12

(iii)	United States Trustee Fees.....	13
(iv)	Bar Date for Assertion of Requests for Payment of Administrative Expenses Other than Administrative Tax Claims.....	13
(v)	Approval of Payment.....	13
(vi)	Bar Date for Assertion of Administrative Tax Claims.....	13
(b)	Allowed Priority Tax Claims.....	14
2.	Class 1 (Allowed Priority Claim of Internal Revenue Service).....	14
3.	Class 2 (Allowed Secured Claims Relating to Property Sold Pursuant to the APA).....	14
	Class 2.1 (Allowed Secured Tax Claim of Taxing Authorities for Shelby County, Texas).....	14
	Class 2.2 (Allowed Secured Claim of Sabine State Bank and Trust Co., Inc.).....	15
	Class 2.3 (Allowed Secured Claim of Rycar Investments, LLC).....	15
	Class 2.4 (Allowed Secured Claim of Enviro-Vac, Ltd.).....	15
	Class 2.5 (Allowed Secured Claim of Colonial Pacific Leasing Corporation).....	15
4.	Class 3 (Allowed Secured Claims Relating to Retained Assets).....	15
	Class 3.1 (Allowed Secured Claim of Taxing Authorities of Panola County and Shelby County).....	16
	Class 3.2 (Allowed Secured Claim of Caterpillar Financial Services).....	16
	Class 3.3 (Allowed Secured Claim of Enviro-Vac, Ltd.).....	16
	Class 3.4 (Allowed Secured Claim of Komatsu Financial).....	16
	Class 3.5 (Allowed Secured Claim of CNH Capital America, LLC).....	17
	Class 3.6 (Allowed Secured Claim of Ford Credit).....	17
	Class 3.7 (Allowed Secured Claim of Sabine State Bank and Trust Co., Inc.).....	17
	Class 3.8 (Allowed Secured Claim of GE Capital).....	17
	Class 3.9 (Allowed Secured Citizens State Bank).....	18
	Class 3.10 (Allowed Secured of Henry and Patricia Twomey).....	18
	Class 3.11 (Allowed Secured Claim of Volvo Financial Services).....	18
	Class 4 (Allowed Unsecured Claim of Bass Drilling, Inc.).....	19
	Class 5 (Allowed Unsecured Claims).....	19
	Class 6 (Allowed Interests of Members).....	19
E.	Treatment of Executory Contracts.....	19
	1. Generally.....	19
	2. Deadline for the Assertion of Rejection Damage Claims and for the Objection to Such Claims; Treatment of Rejection Damage Claims.....	19
	3. Proposed Cure Amounts for Assumed Executory Contracts and Deadline for Objection to Such Cure Amounts and to the Proposed Assumption.....	20
F.	Means for Execution and Implementation of the Plan.....	20
G.	The Closing.....	20
H.	Distribution, Reserves and Objections to Claims.....	20
	1. Claims Objection Deadline.....	20
	2. Creation of Reserves.....	21
	3. Distributions.....	21

(a)Generally .....	21
(b)Unclaimed Distributions .....	22
I. Continuing Jurisdiction of the Bankruptcy Court.....	22
VI. CONFIRMATION AND EFFECTIVENESS OF THE PLAN .....	22
A. Voting and Right to be Heard at Confirmation.....	22
1. Who May Support or Object to Confirmation of the Plan? .....	22
2. Who May Vote to Accept or Reject the Plan? .....	23
3. What is an Allowed Claim or Interest for Voting Purposes?.....	23
4. What is an Impaired Claim? .....	23
5. Who is Not Entitled to Vote?.....	23
(a)Votes Necessary to Confirm The Plan .....	24
(b)Votes Necessary for a Class to Accept the Plan.....	24
(c)Treatment of Non-Accepting Classes.....	24
(d)Request for Confirmation Despite Non-Acceptance by Impaired Classes.....	24
B. Liquidation Analysis.....	24
C. Feasibility.....	26
D. Risks Associated with the Plan.....	26
E. Alternatives to Plan.....	26
F. Dismissal.....	27
G. Chapter 7 Liquidation .....	27
H. Alternative Plan .....	27
I. Effective Date .....	27
1. Conditions to the Occurrence of the Effective Date. ....	27
2. Non-Occurrence of Effective Date. ....	28
J. Effect of Confirmation: Limitation on Liability; Indemnification .....	28
1. Discharge and Satisfaction.....	28
2. Injunction.....	28
3. Limitation of Liability; Indemnification.....	29
4. Post-Effective Date Notice. ....	29
VI. CERTAIN FEDERAL INCOME TAX CONSEQUENCES .....	30
A. Introduction.....	30
B. Federal Income Tax Consequences to Debtors.....	30
1. Sales of Asset.....	30
2. Reduction of Indebtedness.....	30
C. Federal Income Tax Consequences to Creditors .....	31
1. General.....	31
(a)Gain/Loss on Exchange.....	31
(b)Tax Basis of Items Received.....	32
2. Receipt of Interest.....	32
3. Treatment of Litigation Proceeds.....	32
4. Other Tax Considerations. ....	32
(a)Market Discount .....	32
(b)Withholding.....	33
(c)Taxation of Certain Reserves .....	33
D. General Disclaimer .....	33



## I.

### INTRODUCTION

On May 25, 2010 (the “Petition Date”), Sand Hill Foundation, LLC, a Texas limited liability company, Sand Hill Panola SWD #2 LLC, a Texas limited liability company, and Sand Hill Panola SWD #5 LLC, a Texas limited liability company (“Debtor” or “Debtors”), filed their voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (“Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of Texas, Lufkin Division (“Bankruptcy Court”), thereby commencing Case No. 10-90209, 10-90210 and 10-90211, jointly administered under Case No. 10-90209 (“Bankruptcy Case”). Since the Petition Date, each of the Debtors has managed its affairs as debtor and debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. On March 11, 2011, the Debtors filed in Bankruptcy Court a motion that the Debtors be substantially consolidated for purpose of presenting a consolidated plan of reorganization (the “Plan”).

The Debtors are the proponent of the Plan, which is attached hereto as Exhibit “A.” After a hearing on this Disclosure Statement, the Bankruptcy Court will have determined that this Disclosure Statement contains “adequate information” within the meaning of Section 1125 of the Bankruptcy Code and authorized Debtor to transmit it to the creditors, together with the Plan. Any capitalized term not otherwise defined in this Disclosure Statement has the meaning ascribed to it in the Plan.

#### **A. Purpose of the Disclosure Statement**

The purpose of this Disclosure Statement is to provide creditors and interest owners with information that (i) summarizes the Plan and alternatives to the Plan; (ii) advises creditors and interest owners of their rights under the Plan; (iii) assists creditors and interest owners entitled to vote in making informed decisions as to whether they should vote to accept or reject the Plan; and (iv) assists the Bankruptcy Court in determining whether the Plan complies with the provisions of Chapter 11 of the Bankruptcy Code and should be confirmed. This Disclosure Statement is designed to provide creditors and interest owners with information in sufficient detail that enables a typical holder of Claims to make an informed judgment about the Plan. Included in this Disclosure Statement is information on the deadline for casting ballots with respect to the Plan, the deadline for filing objections to confirmation of the Plan and the requirements that must be satisfied in order for the Bankruptcy Court to confirm the Plan. ***Parties in interest should read this Disclosure Statement, the Plan and all of the accompanying Exhibits in their entirety in order to ascertain:*** (i) how the Plan will affect their Claims against and Interests in the Debtors; (ii) their rights with respect to voting for or against the Plan; (iii) their rights with respect to objecting to confirmation of the Plan; and (iv) how and when to cast a ballot with respect to the Plan.

This Disclosure Statement, however, cannot and does not provide holders of Claims and owners of Interests with legal or other advice or inform such parties of all aspects of their rights. Claimants and owners of Interests are advised to consult with their lawyers and/or financial advisors to obtain more specific advice regarding how the Plan will affect them and regarding their best course of action with respect to the Plan.

This Disclosure Statement has been prepared by the Debtors with assistance as to legal matters and requirements from its counsel. Debtors propose their plan in good faith and in compliance with applicable provisions of the Bankruptcy Code. Based upon information currently available, the Debtors believe that the information contained in this Disclosure Statement is correct as of the date of its filing to the best of their knowledge, information and belief. The Disclosure Statement, however, does projects significant events that occur after its filing date and the Debtors assume no duty and presently do not intend to prepare or distribute any amendments or supplements to reflect such events.

**B. Summary of Entities Entitled to Vote On the Plan and Of Certain Requirements Necessary For Confirmation of the Plan**

Only holders of Allowed Claims and owners of Interests classified in Classes 3 and 5 (collectively, the “Voting Classes”) are entitled to vote on the Plan because such Classes contain Claims and Interests that are “impaired” within the meaning of Section 1124 of the Bankruptcy Code. Because the Claims in Classes 1, 2 and 4 are not impaired under the Plan, holders of allowed Claims in these Classes are not entitled to vote on the Plan. Holders of Claims in Class 6, which consists of equity holders of the Debtors, are deemed insiders as defined in the Code and are not entitled to vote. Holders of Claims in Classes 1, 2, 4, and 6, however, may object to confirmation of the Plan.

The Bankruptcy Court may confirm the Plan only if at least one Class of impaired Claims or Interests has voted to accept the Plan (without counting the votes of any insiders whose Claims or Interests are classified within that Class) and if certain statutory requirements are met as to both nonconsenting members within a consenting Class and as to dissenting Classes. A Class of Claims or Interests has accepted the Plan only when at least one-half ( $\frac{1}{2}$ ) in number and at least two-thirds ( $\frac{2}{3}$ ) **in amount of the allowed Claims or Interests actually voting in that Class vote in favor of the Plan.**

**If not all Classes vote in favor of the Plan, the Debtors intend to request that the Bankruptcy Court confirm the Plan in accordance with Section 1129(b) of the Bankruptcy Code, which permits confirmation notwithstanding such rejection if the Bankruptcy Court finds that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to any rejecting class.**

**C. Voting Procedures, Balloting Deadline, Confirmation Hearing, And Other Important Dates, Deadlines And Procedures**

**1. Voting Procedures and Deadlines.**

The Debtors have provided copies of this Disclosure Statement and Ballots (which include detailed voting instructions) to all known holders of impaired Claims and Owners of Interests. Those holders of an Allowed Claim and owners of an Interest who seek and are entitled to vote on the Plan must complete the enclosed ballot and return it to **Traudel Meyer, c/o Oppel & Goldberg, P.L.L.C., 1010 Lamar, Suite 1420, Houston, Texas 77002** (the “Ballot Tabulator”), so that it actually is received by no later than the Balloting deadline (as defined

below). Ballots do not constitute proofs of Claims and must not be returned to either the Debtors or the Bankruptcy Court.

*All ballots, including ballots transmitted by facsimile, must be signed and be returned to and actually received by the Ballot Tabulator by not later than \_\_\_\_\_, 2011 at 5:00 p.m. Central Standard Time (the "Balloting Deadline"). Ballots received after the Balloting Deadline, and ballots returned directly to the Debtors, the Bankruptcy Court or any entity other than the Ballot Tabulator, will not be counted in connection with confirmation of the Plan.*

*Also, just because you receive a ballot does not mean your vote will count. Claims that are subject to objection are not counted, absent allowance by order of the Court.*

## **2. Waivers of Defects and Other Irregularities Regarding Ballots.**

Unless otherwise directed by the Bankruptcy Court, all questions concerning the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of Ballots will be determined by the Bankruptcy Court in its discretion, whose determination will be final and binding absent other Order from the Bankruptcy Court. Debtors reserve the right to reject any and all Ballots not in proper form, the acceptance of which would, in the opinion of the Debtors or their counsel, be unlawful with the Court to determine the validity of any objection. Debtors further reserve the right to waive any defects or irregularities or conditions of delivery as to any particular Ballot. Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Debtor determines. Neither the Debtors nor any other person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots, nor will any of them incur any liability for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such Ballots will not be deemed to have been made until any irregularities have been cured or waived. Ballots previously furnished, and as to which any irregularities have not subsequently been cured or waived, will be invalidated.

## **3. Date Of The Confirmation Hearing And Deadlines For Objection To Confirmation Of The Plan.**

The hearing to determine whether the Plan will be confirmed will commence on \_\_\_\_\_, 2011, at \_\_\_\_\_ m. in the United States Bankruptcy Court, Jack Brooks Federal Courthouse, 300 Willow Street, Beaumont, Texas. The Confirmation Hearing may be continued from time to time by announcement in open court without further notice.

Any objections to confirmation of the Plan must be filed with the Bankruptcy Court and served on the following persons by facsimile no later than \_\_\_\_\_, 2011, 5:00 p.m.:

Jeffrey Wells Oppel  
Oppel & Goldberg, P.L.L.C.  
1010 Louisiana, Suite 1420  
Houston, Texas 77002  
FAX: 713-659-9300



Timothy W. O'Neal  
Assistant U.S. Trustee  
Office of The United States Trustee  
110 North College Avenue, Rm. 300  
Tyler, Texas 75702  
Fax: 903-590-1461

Please refer to the accompanying Notice of Confirmation Hearing for specific requirements regarding the form and nature of objections to confirmation of the Plan.

#### **4. Important Notice and Cautionary Statement.**

The historical factual and financial data relied upon in preparing the Plan and this Disclosure Statement is based upon Debtors' books, records and memory with reference when available or otherwise relevant to the records of the Debtors. The liquidation analysis, estimates and other financial information referenced in this Disclosure Statement or attached hereto as Exhibits have been developed by Debtors with the assistance of their professional advisors. Although these professional advisors assisted in the preparation of this Disclosure Statement, in doing so such professionals relied upon factual information and assumptions regarding financial, business and accounting data provided by the Debtors and third parties, much of which information has not been audited. *The professional advisors to Sand Hill Foundation, LLC, Sand Hill Panola SWD #2 LLC, and Sand Hill Panola SWD #5 LLC have not independently verified such information and, accordingly, make no representations as to its accuracy.* Moreover, although reasonable efforts have been made to provide accurate information, Debtors cannot warrant or represent that the information in this Disclosure Statement, including any and all financial information, is without inaccuracy or omissions, or that actual values or distributions will comport with the estimates herein.

*No entity should rely upon the Plan or this Disclosure Statement or any of the accompanying Exhibits for any purpose other than to determine whether to vote in favor of or against the Plan.*

Certain information included in this Disclosure Statement and its exhibits contains forward looking statements within the meaning of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended. Such forward looking information is based on information available when such statements are made and is subject to risks and uncertainties that could cause actual results to differ materially from those expressed in the statements.

*The Securities and Exchange Commission has neither approved nor disapproved this Disclosure Statement, nor has it determined whether this Disclosure Statement is truthful or complete.*

#### **5. Additional Information.**

If you have any questions about the procedures for voting on the Plan, desire another copy of a ballot or seek further information about the timing and deadlines with respect to confirmation of the Plan, please write to the Ballot Tabulator at the address set forth above. The

Ballot Tabulator, however, cannot and will not provide holders of Claims or Interests with any advice, including advice regarding how to vote on the Plan or the legal effect that confirmation of the Plan will have upon Claims against or Interests in the Debtors.

## II.

### BACKGROUND OF DEBTORS' BUSINESSES

#### A. Company History

Larry Joe and Delicia Eaves began Sand Hill Foundation, LLC in January of 2004. At that time it was just a small business running two salt water trucks. In June of 2005, the business was moved from the Eaves' home to its present location in Center, Texas. At this time more water trucks were added and Sand Hill Foundation, LLC branched out and began the construction of well sites. Not long after that it added its fleet of dump trucks and began trucking its own rock and clay to the well sites being constructed. During the next five years Sand Hill Foundation, LLC continued to grow.

In 2008, Sand Hill Foundation, LLC opened the current office in Carthage, Texas. This office houses the dispatch unit, water trucks, rock trucks, and a 24 hour shop for in house repairs on trucks and equipment. The foremen also work out of this office seeing that all employees report to work at the Carthage location.

In 2009 we added two salt water disposals and began offering the disposal services to surrounding companies. Today Sand Hill Panola SWD #2 and Sand Hill Panola SWD #5 are up and accepting salt water and flow back. Sand Hill Panola SWD #2 has a fresh water pond located on site that offers customers fresh water. Sand Hill Panola SWD #5 is able to accept pit water to that location.

Currently, Sand Hill Foundation, LLC employs around 140 employees and is able to construct a well site from clearing the site to being customer ready for the rig to set up and begin drilling the site. We continue to offer salt water, flow back, pit water and fresh water trucking to our customers. In addition to taking care of big companies, Sand Hill Foundation also offers services to individuals in the way of digging ponds, trucking rock and clay, building house pads, and constructing and maintaining driveways.

Sand Hill Foundation, LLC has always stood behind the job performed and is willing to see that the job is completed in a timely manner with excellence.

#### B. Events Leading to Bankruptcy

Bass Drilling Inc. sued Sand Hill Foundation, LLC and others for breach of contract, conversion and other claims and theories in the United States District Court, Eastern District of Texas, Lufkin Division, Case No. 09-CV-187-TH, *Bass Drilling Inc. v. Larry Eaves et. al.* Sand Hill Foundation, LLC vigorously defended against such claims. However, after trial and jury verdict in favor of Bass Drilling, Inc., the court entered judgment against Sand Hill Foundation, LLC in the approximate amount of Four Million One Hundred Thousand Dollars

(\$4,100,000.00). Bass Drilling, Inc. sought enforcement of the judgment through turnover and receivership actions, such actions which would have caused substantial hardship and irreparable harm to the Debtors ongoing operations.

As a result, the Debtors filed for bankruptcy protection under Chapter 11.

**C. Historical Financial Information**

For information relative to the Debtors' financial condition, parties are referred to the Monthly Operating Reports filed with the Bankruptcy Court, the latest of which will be attached as Exhibit "B."

**D. Financing of the Debtors**

Prior to Petition Date, the Debtors have received financing as follows:

1. Sabine State Bank and Trust Co.
2. Rycar Investments, LLC
3. Caterpillar Financial Services
4. Enviro-Vac, Ltd.
5. Komatsu Financial
6. CNH Capital America, LLC
7. Ford Credit
8. GE Capital
9. Citizens State Bank
11. Volvo Financial Services
12. Premium Financial Services
13. Henry and Patricia Twomey

**III.**

**POSTPETITION EVENTS**

The following is a summary of significant events that have occurred in the bankruptcy case.

**A. Administration of the Case**

After the Petition Date, and in accordance with Sections 1107(a) and 1108 of the Bankruptcy Code, Debtors continue to operate their businesses and manage their properties as debtors-in-possession. The Debtors have negotiated with and entered into adequate protection stipulations with the following secured creditors:

- Caterpillar Financial Services Corporation (equipment)
- Citizens State Bank (equipment)

Ford Financial (trucks)  
GE Financial (equipment)  
Colonial Pacific Leasing Corporation (vehicle)  
Komatsu Financial Limited Partnership (equipment)  
Navistar Financial Corporation (equipment)  
Rycar Investments, LLC (real property)  
Volvo Financial Services, a div. of VFS US LLC (vehicle)

**B. Creditors Committee**

A committee of unsecured creditors was appointed on June 9, 2010. Counsel for the Official Committee of Unsecured Creditors is Jason R. Searcy.

Pursuant to Sections 327 and 328 of the Bankruptcy Code, Debtors applied for approval of the employment of the law firm of Oppel & Goldberg, P.L.L.C. as their bankruptcy counsel. On July 12, 2010, the Court approved the retention of Oppel & Goldberg, P.L.L.C. as bankruptcy counsel.

Debtors further applied for approval of the employment of John Coggin as their accountant. On July 29, 2010, the Court approved the retention of John Coggin as Debtors' accountant.

Debtors further applied for approval of the employment of Alan White and White-Shaver, PC as their counsel for the case styled *Larry Eaves and Sand Hill Foundation, LLC v. Bass Drilling, Inc.*, Case No. 10-40422, currently pending before the United States Court of Appeals, Fifth Circuit. The Court approved the retention of Alan White and White-Shaver, PC as Debtors' appellate counsel on August 13, 2010.

Upon application, on July 7, 2010, the Court also approved the retention of Jason R. Searcy and Searcy & Searcy, PC as counsel for the Official Committee of Unsecured Creditors.

From the Petition Date through the date of confirmation, pursuant to orders of the Bankruptcy Court, Debtors' Estates anticipate incurring fees and expenses to approved professionals (inclusive of any prepetition retainers held by certain professionals) in the amount of approximately \$250,000.00. Pursuant to Section 330 and 331 of the Bankruptcy Code, the fees and expenses of each of the Professionals are subject to review and approval of the Bankruptcy Court.

**D. First Meeting of Creditors**

The meeting of creditors was held on July 9, 2010.

**E. Schedules and Statement of Financial Affairs**

The Debtors filed their Schedules and Statement of Financial Affairs on June 8, 2010.

**F. Executory Contracts**

Debtors are parties to several Executory Contracts and Unexpired Leases. For a specific list of such contracts and leases, please refer to Schedule G filed with the Bankruptcy Court.

**G. Rejection of Contracts and Leases**

All contracts and leases other than the Assumed Contracts and Leases will be rejected pursuant to the terms of the Plan. At least fifteen (15) days prior to any hearing to consider confirmation of Debtors' Plan, Debtors will file a notice of executory contract and unexpired leases they intend to assume.

**H. Significant Post-Petition Activities**

For a complete listing of all activity in the Debtors' bankruptcies, please refer to the Docket Sheet for Case No. 10-90209. The Bankruptcy Cases are being jointly administrated under such case number by order entered on June 4, 2010. The following are certain significant events that have occurred since the commencement of the bankruptcies.

On June 4, 2010, the Bankruptcy Court entered an order to allow the Debtors the temporary use of cash collateral. On July 13, 2010, the Bankruptcy Court entered a final order allowing Debtors use of cash collateral.

As previously stated, the Debtors have entered into numerous stipulations with secured creditors providing equipment or operations financing. In addition, the Debtors have entered into stipulations with the following creditors that hold unexpired leases and executory contracts:

Enviro-Vac, Ltd. (truck/trailer lease)  
Omni Industrial Solutions, LLC (oil products supply contract)  
Texas Mutual Insurance Company (workers compensation contract)  
Waukesha-Pearce Industries, Inc. (equipment lease)

On March 11, 2011, the Debtors filed a motion to substantially consolidate the Debtors for the purpose of preparing a consolidated plan of reorganization. The Creditors Committee has filed an endorsement of the motion. No objections have been filed to date.

**I. Sale of Water Disposal Assets**

The Debtors are in the oilfield water disposal industry. Among services offered by the Debtors are the disposal of water in two (2) salt water disposal wells one of which is operated by Debtor Sand Hill Panola SWD #2 LLC and is commonly referred to as Sand Hill #2 Well and the other which is operated by Debtor Sand Hill Panola SWD #5 LLC and is commonly referred to as Sand Hill #5 Well. Debtor Sand Hill Foundation, LLC provides transportation services for disposal of the water through its trucks, trailers and drivers. The Debtors' assets involved in the water disposal business also include licenses and permits, furniture, fixtures, equipment, machinery, furnishings, contracts and leases, as well as other tangible and intangible property.

The wells heretofore described are regulated by the Texas Rail Road Commission ("TRRC") and the Texas Commission on Environmental Quality ("TCEQ"). The Debtors

possess the necessary permits to operate the salt water wells. In addition, the Debtors operate a fleet of trucks, trailers and other vehicles in connection with the disposal of the salt water. Certain permits are required by the U.S. Department of Transportation for the operation of the trucks and trailers and the Debtors possess the necessary permits to transport salt water.

The Debtors determined the best strategy for reorganization was to sell the assets involved in its water disposal business and retain the construction business. The Debtors solicited interest for the water disposal business and entered into negotiations for the sale of the assets in the water disposal business.

On March 11, 2011, the Debtors filed a motion to approve the sale of certain assets pursuant to an Asset Purchase Agreement (the "APA") between Debtors and Heckmann Water Resources (CVR), Inc. for the cash consideration of Twenty Million and 00/100 Dollars (\$20,000,000.00) subject to closing adjustments and transactional expenses as described in the APA. The assets to be sold pursuant to the APA are involved in the Debtors' water disposal business and include the two (2) salt water disposal wells and related equipment and thirty (30) trucks and thirty (30) trailers identified on Exhibit B hereto. Approval of the sale is sought under Section 363(n) of the United States Bankruptcy Code. Such section permits the sale of assets of a debtor free and clear of all liens, interests and encumbrances with all liens and encumbrances being attached to the proceeds of the sale. A hearing is set for April 5, 2011 for the Bankruptcy Court to consider approval of the APA. Attached hereto as Exhibit C is a list of all known creditors asserting liens and encumbrances against the assets proposed to be sold. The liens, interests and encumbrances of creditors will attach to the proceeds from the sale subject to the same validity, priority and extent of such lien, interest and encumbrance in the property that was sold. Upon approval of the Bankruptcy Court by confirmation of the Plan or otherwise, creditors with valid liens, interests or encumbrances against the sold property shall be satisfied in full from the proceeds of the sale. A reserve account will be established for creditors with disputed claims of liens, interests or encumbrances against the sold property. All remaining proceeds will be held by the Debtors to satisfy claims pursuant to the terms and conditions of the Plan.

Pursuant to APA, the Debtor will assume certain unexpired leases and executory contracts and assign them to the Purchaser. The Debtors have agreed to satisfy all past due amounts owed under such contracts a leases prior to assignment.

#### **J. Bass Settlement**

On or about February 11, 2010, Bass Drilling, Inc. ("Bass Drilling") obtained a judgment against Sand Hill Foundation, LLC in the approximate amount of Four Million One Hundred Thousand Dollars (\$4,100,000.00). Bass Drilling has filed abstracts of judgment in Panola County and Shelby County and has filed secured claims against each Debtor's estate in the amount of 44,153,520.57.

The Debtors disputed the Bass Drilling Claims and Sand Hill Foundation, LLC has timely appealed the judgment. The Debtors and Bass Drilling have agreed to settle the claims of Bass Drilling for payment in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00). A motion to compromise the controversy between the Debtors and Bass Drilling was filed on February 23, 2011. A hearing is set for April 5, 2011 for the Bankruptcy

Court to consider approval of the compromise.

#### IV.

#### **ASSETS OF THE DEBTORS**

##### **1. Cash Proceeds From Sale of Water Disposal Assets**

The sale of the Debtors' water disposal business will provide the Debtors approximately Twenty Million Dollars (\$20,000,000.00) for treatment of Allowed Claims pursuant to the Plan. The Debtors further believe that the amount of \$20,000,000.00 is sufficient to satisfy all cash requirements required under the Plan.

##### **2. Retained Assets**

The Debtors will retain cash from operations in the approximate amount of \$750,000.00 as of February 28, 2011, accounts receivable in excess of \$5,000,000.00 as of February 28, 2011, as well as real and personal property used in its construction business valued at over \$5,000,000.00, based on the Debtors' books and records. Copies of the Debtors' monthly operating reports for February 2011 are attached hereto as Exhibit D.

##### **3. Preference and Other Avoidance Litigation**

Due to the financial condition of the Debtors and the terms of the Plan, the Debtors do not believe there are recoverable preferences or other avoidance claims to pursue.

#### V.

#### **SUMMARY OF THE PLAN**

*The discussion of the Plan set forth below is qualified in its entirety by reference to the more detailed provisions set forth in the Plan and any exhibits attached thereto, the terms of which are controlling. Holders of Claims, Equity Interests, and other parties-in-interest are urged to read the Plan and any exhibits thereto in their entirety so that they may make an informed judgment regarding the Plan.*

The Plan generally provides for the distribution of sales proceeds for the payment of all Allowed Claims, including provision for the pursuit of any unresolved causes of action and objecting to Disputed. To accomplish this, the Plan generally provides for the following to occur upon or to have secured prior to the Effective Date: (i) assumption of the Assigned Contracts; (ii) the filing of objections to Disputed Claims and otherwise continue the reorganization process, in each case pursuant to the oversight of the Bankruptcy Court; (iii) the creation of reasonable reserves for Disputed Claims, and the making of distributions to holders of Allowed Claims as provided in the Plan; and (iv) the rejection of all remaining Executory Contracts and unexpired Leases of the Debtors. The Plan further provides for the Reorganized Debtors to continue business without the Bankruptcy Court's supervision.

## **A. Overview of Chapter 11**

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor-in-possession attempts to reorganize its business and financial affairs or liquidate its property and assets for the benefit of the debtor, its creditors, and other interested parties.

The commencement of a chapter 11 case creates an estate that includes all of the debtor's legal and equitable interests in property as of the date the petition is filed, other than exempt property. Unless the Bankruptcy Court orders the appointment of a Trustee, Bankruptcy Code sections 1107 and 1108 provide that a chapter 11 debtor may continue to operate its business and control the assets of its estate as a "debtor-in-possession."

The filing of a chapter 11 petition also triggers the automatic stay under Bankruptcy Code section 362. The automatic stay halts essentially all attempts to collect prepetition claims from the debtor or to otherwise interfere with the debtor's business or its bankruptcy estate.

Formulation of a plan of reorganization/liquidation is the principal purpose of a chapter 11 case. The plan sets forth the means for satisfying the claims of creditors against, and interests of equity security holders in, the debtor. Unless a trustee is appointed, only the Debtors may file a plan during the first 120 days of a chapter 11 case (the "Exclusive Period"). After the Exclusive Period has expired, a creditor or any other interested party may file a plan, unless the debtor files a plan within the Exclusive Period. If a debtor does file a plan within the Exclusive Period, the debtor is given an additional sixty (60) days (the "Solicitation Period") to solicit acceptances of its plan. Bankruptcy Code section 1121(d) permits the Bankruptcy Court to extend or reduce the Exclusive Period and the Solicitation Period on a showing of adequate "cause."

## **B. Plan of Reorganization/Liquidation**

Pursuant to the terms of the Plan, Sand Hill Panola SWD #2 LLC and Sand Hill Panola SWD #5 LLC will merge with Sand Hill Foundation, LLC and Sand Hill Foundation, LLC, the Reorganized Debtor, will continue in business.

## **C. Bar Date for Filing Proofs of Claim**

The Bankruptcy Court established August 23, 2010 as the bar date for filing proofs of claim or interests in this Bankruptcy Case for all parties.

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

### **1. Unclassified Claims.**

Article II of the Plan governs the treatment of certain Claims that are not classified into Classes under the Plan.

#### **(a) Unpaid Administrative Expense Claims**



**(i) Generally**

Section 2.1 of the Plan provides that each holder of an Allowed Administrative Expense Claim, including claims by Professionals for fees and expenses, will receive in full satisfaction, release and discharge of and in exchange for such Claim (i) the amount of such Allowed Administrative Expense Claim, without interest, in cash, on or after the later of (a) the Effective Date, or (b) the date that is ten (10) Business Days after such Claim becomes an Allowed Administrative Expense Claim, or (ii) such other treatment as may be agreed upon in writing by the holder of such Claim and Debtors.

Throughout the course of the Bankruptcy Case, the Debtors will endeavor to satisfy the administrative expenses of the Estate as they became due or in accordance with Bankruptcy Code requirements. Accordingly, Debtors believe that most Claims that otherwise would constitute Allowed Administrative Expense Claims previously have been paid or will be satisfied in the ordinary course of business prior to the Effective Date. Nevertheless, because of delays in invoicing and the necessary approval process regarding Professional Claims, as well as the necessary tax return preparation and filing, not all of such Claims will have been paid by the Effective Date.

**(ii) Payment of Administrative Claims, Professional Fee Claims, and Priority Unsecured Tax Claims**

Administrative Claims are Claims for any cost or expense of the Bankruptcy Case allowable under Bankruptcy Code sections 503(b) and 507(a)(1). Those expenses include all actual and necessary costs and expenses related to the preservation of the Bankruptcy Estate or the operation of the Debtor's business, all claims for cure payments arising from the assumption of executory contracts and unexpired leases under Bankruptcy Code section 365, and all United States Trustee quarterly fees. Under the Plan, Allowed Administrative Claims incurred through the Confirmation Date shall be paid by the Estate from the Administrative Expense Reserve within ten (10) days following the Allowance Date.

Professional Fee Claims are Claims for compensation and reimbursement of expenses by Professionals to the extent allowed under the Bankruptcy Code and Bankruptcy Rules. Allowed Professional Fee Claims incurred through the conclusion of the Closing shall be paid by the Estate within ten (10) days following the Allowance Date: (i) first from the balance of any retainers held by Professionals until fully exhausted and (ii) then from the Administrative Expense Reserve. Any Professional Fee Claims incurred by any Professionals retained by Debtors related solely to the Closing, but arising after the conclusion of the Closing, shall be paid by the Estate from Available Cash as an Estate Cost, without further application to the Bankruptcy Court, and such payment shall be made prior to any Distributions to Claimholders and Interest owners.

The estimated amount of the fees and expenses of Professionals for the Debtor in Possession through confirmation is as follows:

<b>Professional</b>	<b>Capacity</b>	<b>Estimated Fees and Expenses</b>
Oppel & Goldberg, P.L.L.C.	Bankruptcy Counsel	\$ 200,000.00
John Coggin	Accountant	\$ 15,000.00
Jason Searcy	Counsel for Official Unsecured Creditor Committee	\$ 60,000.00
White-Shaver, PC	Counsel for Appellate Case	\$ 30,000.00

**(iii) United States Trustee Fees**

After the Closing Date to implement the Plan and until the Bankruptcy Case is closed, the Estate shall pay as an Estate Cost all fees incurred under 28 U.S.C. § 1930(a)(6).

**(iv) Bar Date for Assertion of Requests for Payment of Administrative Expenses Other than Administrative Tax Claims**

Section 2.1 of the Plan provides that all requests for payment of Administrative Expense Claims or any other means of preserving and obtaining payment of Administrative Expense Claims found to be effective by the Bankruptcy Court (including applications for compensation for fees and reimbursement of expenses filed by holders of Professionals Claims), other than Administrative Tax Claims, must be filed with the Bankruptcy Court and served upon Debtors and its counsel, along with the United States Trustee and all parties who have requested notice in the manner prescribed in the notice to be mailed pursuant to Section 11.3 of the Plan, by the earlier of (i) forty-five (45) days after the Effective Date; or (ii) any applicable bar date established by the Bankruptcy Court and noticed separately by the Debtor. Any request for payment of Administrative Expense Claims, other than Administrative Tax Claims, that is not timely filed as set forth above will be forever barred, and holders of such Claims will not be able to assert such Claims in any manner against the Debtor or the Estate.

**(v) Approval of Payment**

Section 2.1.2 of the Plan provides that all payments made or to be made by the Reorganized Debtor for costs and expenses in or in connection with the Bankruptcy Case, or in connection with the Plan and incident to the Bankruptcy Case, shall be subject to approval of the Bankruptcy Court as reasonable and required, following application and the opportunity for notice and a hearing pursuant to Section 2.1.1 of this Plan. Claims for taxes on any asset dispositions must be paid first.

**(vi) Bar Date for Assertion of Administrative Tax Claims**

Section 2.1.3 of the Plan provides that all requests for payment or any other means of preserving and obtaining payment of Administrative Tax Claims that have not been paid, released or otherwise settled must be filed with the Bankruptcy Court and served upon the Debtor, the Reorganized Debtor, the United States Trustee, and all parties who have requested notice in the manner prescribed in the notice to be mailed pursuant to Section 11.4 of its Plan, by

the later of (i) forty-five (45) days after the Effective Date; or (ii) one hundred and twenty (120) days after the filing of the tax return for such taxes with the applicable Governmental Unit.

Any request for payment of Administrative Tax Claims that is not timely filed as set forth above will be forever barred, and holders of such Claims will not be able to assert such Claims in any manner against the Debtor or the Estate. If Available Cash is insufficient to pay Allowed Administrative Claims, then such Claims will be paid out of the first cash available through sale or loans against assets.

**(b) Allowed Priority Tax Claims**

Section 2.2 of the Plan provides that each holder of an Allowed Priority Tax Claim shall receive in full satisfaction, release and discharge of and in exchange for such Claim (i) the amount of such Allowed Priority Tax Claim, without interest, in cash, on or as soon as practicable after the later of (a) the Effective Date, or (b) the date that is ten (10) Business Days after such Claim becomes an Allowed Priority Tax Claim; or (ii) deferred cash payments in an equal amount over six (6) years that equal the amount of such Allowed Priority Tax Claim.

**2. Class 1 (Allowed Priority Claim of Internal Revenue Service).**

Section 5.1 of the Plan provides that each holder of an Allowed Priority Claim shall receive in full satisfaction, release and discharge of and in exchange for such Claim (i) the amount of such Allowed Priority Claim, in cash upon the later of (a) the Effective Date, or (b) the date that is ten (10) Business Days after such Claim becomes an Allowed Priority Claim; or (ii) such other treatment as may be agreed upon in writing by the holder of such Claim and the Debtor or the Reorganized Debtor with Court approval as may be necessary.

**3. Class 2 (Allowed Secured Claims Relating to Property Sold Pursuant to the APA).**

Class 2 Claims consist of claims held by creditors of which the creditor is asserting that such claim is secured by a lien, interest or encumbrance against property that is to be sold pursuant to APA. The claims of such creditors will attach to the proceeds from such sale to the same extent and priority as such claims attached to the property. The Debtors anticipate that certain Class 2 claims will be paid at or before closing of the sale pursuant to APA or by order of the Bankruptcy Court entered prior to confirmation of the Plan. In the event such claims are Allowed and not paid prior to confirmation of the Plan, the claims will be satisfied as follows:

**Class 2.1 (Allowed Secured Tax Claim of Taxing Authorities for Shelby County, Texas).**

Class 2.1 consists of the Secured Tax Claim for Shelby County, Texas which claims a secured interest in and against (i) the Salt Water Disposal Well #2 real property and improvements and (ii) certain personal property. The Plan provides that each holder of a Class 2.1 Claim shall receive in full satisfaction of and in exchange for such Claim (i) the amount of such Allowed Secured Tax Claim (excluding any penalty assessed or other charges) in cash upon the later of (a) the Effective Date, or (b) the date that is ten (10) Business Days after such Claim

becomes an Allowed Secured Tax Claim.

**Class 2.2 (Allowed Secured Claim of Sabine State Bank and Trust Co., Inc.).**

Class 2.2 consists of the Allowed Secured Claims of Sabine State Bank and Trust Co., Inc. which holds a security interest in and against (i) the Salt Water Disposal Well #2 real property and improvements and (ii) sixteen (16) trailers. The Plan provides that Sabine State Bank and Trust Co., Inc., as holder of a Class 2.2 Claim shall receive in full satisfaction of and in exchange for such Claim payment in cash equal to the amount of the Allowed Secured Claim as soon as practicable or on the Effective Date.

**Class 2.3 (Allowed Secured Claim of Rycar Investments, LLC).**

Class 2.3 consists of the Allowed Secured Claim of Rycar Investments, LLC which holds a security interest in and against Salt Water Disposal Well #5 real property and improvements. The Plan provides that Rycar Investments, LLC, as holder of a Class 2.3 Claim shall receive in full satisfaction of and in exchange for such Claim payment in cash equal to the amount of the Allowed Secured Claim as soon as practicable or on the Effective Date.

**Class 2.4 (Allowed Secured Claim of Enviro-Vac, Ltd.).**

Class 2.4 consists of the Allowed Secured Claim of Enviro-Vac, Ltd. which holds a security interest in and against (i) seven (7) trucks and (ii) two (2) trailers. The Plan provides that Enviro-Vac, Ltd., as holder of a Class 2.4 Claim shall receive in full satisfaction of and in exchange for such Claim payment in cash equal to the amount of the Allowed Secured Claim as soon as practicable or on the Effective Date.

**Class 2.5 (Allowed Secured Claim of Colonial Pacific Leasing Corporation).**

Class 2.5 consists of the Allowed Secured Claim of Colonial Pacific Leasing Corporation which holds a security interest in and against a 2007 Mack truck. The Plan provides that Colonial Pacific Leasing Corporation, as holder of a Class 2.5 Secured Claim shall receive in full satisfaction of and in exchange for such Claim payment in cash equal to the amount of the Allowed Secured Claim as soon as practicable or on the Effective Date.

**4. Class 3 (Allowed Secured Claims Relating to Retained Assets).**

Class 3 Claims consist of claims held by creditors of which the creditor is asserting that such claim is secured by a lien, interest or encumbrance against property that is to be retained by the Debtors and is not being sold pursuant to the APA. Pursuant to the Plan, all Class 3 Claims if allowed will receive the following treatment in satisfaction of such Class 3 Claim: (i) the Reorganized Debtor will reaffirm the debt, (ii) the Reorganized Debtor will pay the reaffirmed debt pursuant to the original terms, (iii) the holders of such claims will retain all liens, interests and encumbrances securing such claims, and (iv) the Debtors shall satisfy all amounts past due in cash upon the later of (a) the Effective Date or (b) the date that is ten (10) Business days after such Claim becomes an Allowed Secured Claim.

The Debtors will seek to establish a bar date for all Class 3 Creditors to file claims to establish all amounts past due on any Class 3

**Class 3.1 (Allowed Secured Claim of Taxing Authorities of Panola County and Shelby County).**

Class 3.1 Claims consist of the Secured Tax Claims of Panola County and Shelby County which claim a security interest against real and personal property of the Debtors. The Plan provides that each holder of a Class 3.1 Claim shall receive in full satisfaction of and in exchange for such Claim (i) the amount of such Allowed Secured Tax Claim (excluding any penalty assessed or other charges) in cash upon the later of (a) the Effective Date, or (b) the date that is ten (10) Business days after such Claim becomes an Allowed Secured Tax Claim.

**Class 3.2 (Allowed Secured Claim of Caterpillar Financial Services).**

Class 3.2 Claims consist of the Secured Claims of Caterpillar Financial Services by virtue of security interests granted by Sand Hill Foundation in and against six (6) pieces of equipment to secure payment of a contract dated June 8, 2009 (the "Caterpillar Contract"). The Plan provides that Caterpillar Financial Services, as holder of a Class 3.2 Claim, shall receive in full satisfaction of and in exchange for such Claim (i) payment in cash equal to the amount of all past due amounts owed under the Caterpillar Note as soon as practicable or on the Effective Date, (ii) reinstatement and reaffirmation by the Reorganized Debtor of the Caterpillar Contracts, and (iii) the acknowledgment of the Debtors of the continuing nature of the security interests granted in security thereof.

**Class 3.3 (Allowed Secured Claim of Enviro-Vac, Ltd.).**

Class 3.3 Claims consist of the Secured Claims of Enviro-Vac, Ltd. by virtue of security interests granted by Sand Hill Foundation in and against several pieces of equipment to secure payment of a note (the "Enviro-Vac Note"). The Plan provides that Enviro-Vac, as holder of a Class 3.3 Claim, shall receive in full satisfaction of and in exchange for such Claim (i) payment in cash equal to the amount of all past due amounts owed under the Enviro-Vac Note as soon as practicable or on the Effective Date, (ii) reinstatement and reaffirmation by the Reorganized Debtor of the Enviro-Vac Note, and (iii) the acknowledgment of the Debtors of the continuing nature of the security interests granted in security thereof.

**Class 3.4 (Allowed Secured Claim of Komatsu Financial).**

Class 3.4 Claims consist of the Secured Claims of Komatsu Financial by virtue of security interests granted by Sand Hill Foundation in and against four (4) pieces of equipment to secure payment of a contract (the "Komatsu Contract"). The Plan provides that Komatsu Financial, as holder of a Class 3.4 Claim, shall receive in full satisfaction of and in exchange for such Claim (i) payment in cash equal to the amount of all past due amounts owed under the Komatsu Contract as soon as practicable or on the Effective Date, (ii) reinstatement and reaffirmation by the Reorganized Debtor of the Komatsu Contract, and (iii) the acknowledgment of the Debtors of the continuing nature of the security interests granted in security thereof.

**Class 3.5 (Allowed Secured Claim of CNH Capital America, LLC).**

Class 3.5 Claims consist of the Secured Claims of CNH Capital America, LLC by virtue of security interests granted by Sand Hill Foundation in and against four (4) pieces of equipment to secure payment of a note (the “CNH Note”). The Plan provides that CNH Capital America, LLC, as holder of a Class 3.5 Claim, shall receive in full satisfaction of and in exchange for such Claim (i) payment in cash equal to the amount of all past due amounts owed under the CNH Note as soon as practicable or on the Effective Date, (ii) reinstatement and reaffirmation by the Reorganized Debtor of the CNH Note, and (iii) the acknowledgment of the Debtors of the continuing nature of the security interests granted in security thereof.

**Class 3.6 (Allowed Secured Claim of Ford Credit).**

Class 3.6 Claims consist of the Secured Claims of Ford Credit by virtue of security interests granted by Sand Hill Foundation in and against twelve (12) trucks to secure payment of installment contracts (the “Ford Contracts”). The Plan provides that Ford Credit, as holder of a Class 3.6 Claim, shall receive in full satisfaction of and in exchange for such Claim (i) payment in cash equal to the amount of all past due amounts owed under the Ford Contracts as soon as practicable or on the Effective Date, (ii) reinstatement and reaffirmation by the Reorganized Debtor of the Ford Contracts, and (iii) the acknowledgment of the Debtors of the continuing nature of the security interests granted in security thereof.

**Class 3.7 (Allowed Secured Claim of Sabine State Bank and Trust Co., Inc.).**

Class 3.7 Claims consist of the Secured Claims of Sabine State Bank and Trust Co., Inc. by virtue of security interests granted by Sand Hill Foundation in and against real property, accounts, vehicles, equipment, machinery and proceeds to secure payment of eighteen (18) promissory notes (the “Sabine Notes”). The Plan provides that Sabine State Bank and Trust Co., Inc., as holder of a Class 3.7 Claim, shall receive in full satisfaction of and in exchange for such Claim (i) payment in cash equal to the amount of all past due amounts owed under the Sabine Notes as soon as practicable or on the Effective Date, (ii) reinstatement and reaffirmation by the Reorganized Debtor of the Sabine Notes, and (iii) the acknowledgment of the Debtors of the continuing nature of the security interests granted in security thereof.

**Class 3.8 (Allowed Secured Claim of GE Capital).**

Class 3.8 Claims consist of the Secured Claims of GE Capital by virtue of security interests granted by Sand Hill Foundation in and against four (4) pieces of equipment to secure payment of a promissory note (the “GE Note”). The Plan provides that GE Capital, as holder of a Class 3.8 Claim, shall receive in full satisfaction of and in exchange for such Claim (i) payment in cash equal to the amount of all past due amounts owed under the GE Note as soon as practicable or on the Effective Date, (ii) reinstatement and reaffirmation by the Reorganized Debtor of the GE Note, and (iii) the acknowledgment of the Debtors of the continuing nature of the security interests granted in security thereof.

**Class 3.9 (Allowed Secured Citizens State Bank).**

Class 3.9 Claims consist of the Secured Claims of Citizens State Bank by virtue of security interests granted by Sand Hill Foundation in and against certain personal property to secure payment of a note (the “Citizens Note”). The Plan provides that Citizens State Bank, as holder of a Class 3.9 Claim, shall receive in full satisfaction of and in exchange for such Claim (i) payment in cash equal to the amount of all past due amounts owed under the Citizens Note as soon as practicable or on the Effective Date, (ii) reinstatement and reaffirmation by the Reorganized Debtor of the Citizens Note, and (iii) the acknowledgment of the Debtors of the continuing nature of the security interests granted in security thereof.

**Class 3.10 (Allowed Secured of Henry and Patricia Twomey).**

Class 3.10 Claims consist of the Secured Claims of Henry and Patricia Twomey by virtue of security interests granted by Sand Hill Foundation in and against the certain real property to secure payment of a promissory note (the “Twomey Note”). The Plan provides that the Twomeys, as holders of a Class 3.10 Claim, shall receive in full satisfaction of and in exchange for such Claim (i) payment in cash equal to the amount of all past due amounts owed under the Twomey Note as soon as practicable or on the Effective Date, (ii) reinstatement and reaffirmation by the Reorganized Debtor of the Twomey Note, and (iii) the acknowledgment of the Debtors of the continuing nature of the security interests granted in security thereof.

**Class 3.11 (Allowed Secured Claim of Volvo Financial Services).**

Class 3.11 Claims consist of the Secured Claims of Volvo Financial Services by virtue of security interests granted by Sand Hill Foundation in and against two (2) vehicles to secure payment of a note (the “Volvo Note”). The Plan provides that Volvo Financial Services, as holder of a Class 3.11 Claim, shall receive in full satisfaction of and in exchange for such Claim (i) payment in cash equal to the amount of all past due amounts owed under the Volvo Note as soon as practicable or on the Effective Date, (ii) reinstatement and reaffirmation by the Reorganized Debtor of the Volvo Note, and (iii) the acknowledgment of the Debtors of the continuing nature of the security interests granted in security thereof.

**Class 3.12 (Allowed Secured Claim of Navistar Financial Corporation).**

Class 3.12 Claims consist of the Secured Claims of Navistar Financial Corporation by virtue of security interests granted by Sand Hill Foundation in and against certain equipment to secure payment of a note (the “Navistar Note”). The Plan provides that Navistar Financial Corporation, as holder of a Class 3.12 Claim, shall receive in full satisfaction of and in exchange for such Claim (i) payment in cash equal to the amount of all past due amounts owed under the Navistar Note as soon as practicable or on the Effective Date, (ii) reinstatement and reaffirmation by the Reorganized Debtor of the Navistar Note, and (iii) the acknowledgment of the Debtors of the continuing nature of the security interests granted in security thereof.

**Class 4 (Allowed Unsecured Claim of Bass Drilling, Inc.).**

Class 4 Allowed Unsecured Claim consists of the claim of Bass Drilling, Inc. which holds a judgment against the Debtors and others. The Class 4 Creditor has agreed to compromise its claim to \$2,500,000.00. The Debtors filed a motion to compromise the Claim and the Court approved the compromise on April \_\_\_, 2011. The Class 14 Creditor shall receive in full satisfaction, release and discharge of and in exchange for its Allowed Unsecured Claim \$2,500,000.00 on or before thirty (30) days from the date the order becomes final.

**Class 5 (Allowed Unsecured Claims).**

\_\_\_\_\_Class 5 consists of all Claims that are not Administrative Claims, Priority Claims, Secured Claims or Disputed Claims. Creditors holding Allowed Unsecured Claims shall receive in full satisfaction, release and discharge of and in exchange for their Allowed Unsecured Claim cash in an amount equal to the Allowed Amount of such Unsecured Claim.

**Class 6 (Allowed Interests of Members).**

The Plan provides that the Members of the Debtors, which are the holders of Class 6 Claims, will retain their interests.

**E. Treatment of Executory Contracts**

**1. Generally.**

The Bankruptcy Code empowers debtors-in-possession, subject to the approval of the Bankruptcy Court, to assume or reject the debtor's executory contracts and unexpired leases. An "executory contract" generally means a contract under which material performance, other than payment of money, is due by the parties. If an executory contract or unexpired lease is rejected by the debtor-in-possession, the rejection operates as a prepetition breach of such agreement. If an executory contract or unexpired lease is assumed by the debtor-in-possession, the assumption obligates the debtor-in-possession to perform under the agreement, and damages arising for any subsequent breach of the contract or lease are treated as administrative expenses of the Estate.

Section 10.1 of the Plan provides that effective on and as of the Effective Date, all Executory Contracts that exist between the Debtors and any Person and that have not previously been assumed and assigned or rejected by the Debtor, other than the Assumed Contracts assumed pursuant to the Plan, will be rejected pursuant to Section 365 of the Bankruptcy Code.

**2. Deadline for the Assertion of Rejection Damage Claims and for the Objection to Such Claims; Treatment of Rejection Damage Claims.**

Section 10.1.1 of the Plan provides that proofs of Claims for damages allegedly arising from the rejection, pursuant to this Plan or the Confirmation Order, of any Executory Contract and unexpired lease to which a Claimant is a party must be filed with the Bankruptcy Court and



served on the Debtor or Reorganized Debtor not later than thirty (30) days after the Effective Date. All proofs of Claim for such damages not timely filed and properly served as prescribed herein shall be forever barred and the holder of such a claim shall not be entitled to participate in any distribution under the Plan.

Section 10.1.2 of the Plan provides that all creditors and parties-in-interest shall be authorized to file an objection to any proof of Claim based on the rejection of an Executory Contract pursuant to this Plan or the Confirmation Order. The objection to any such proof of Claim shall be filed not later than one hundred and twenty (120) days after the later of (i) the date that such proof of Claim is filed; and (ii) the Effective Date.

The Debtor does not anticipate that the rejection of and Executory Contract under the Plan will give rise to any substantial damage claims other than Claims that previously have been asserted against the Debtor.

**3. Proposed Cure Amounts for Assumed Executory Contracts and Deadline for Objection to Such Cure Amounts and to the Proposed Assumption.**

**F. Means for Execution and Implementation of the Plan**

The Debtor, the Reorganized Debtor, and each class of creditors shall agree to forms of documents, if any, as further necessary to implement the Plan prior to the Effective Date. In the event of disputes, all such matters will be presented to the Bankruptcy Court for adjudication.

**G. The Closing**

A closing of the various transactions required and contemplated under the Plan shall take place on the Effective Date at the offices of the Debtors' counsel, or at such place identified in a notice provided to those parties specified in section 16.2 of the Plan. At the Closing, all necessary actions shall be taken to reorganize the Debtor as the Reorganized Debtor and to implement the terms and conditions of the Plan. All necessary action shall be taken to effectuate the transactions contemplated under the Plan and otherwise implement the provisions of the Plan.

**H. Distribution, Reserves and Objections to Claims**

**1. Claims Objection Deadline.**

Section 7.1 of the Plan provides that, following the Effective Date and subject to the provisions of Section 7.1 of the Plan, the Debtors or the Reorganized Debtors or any creditor or party-in-interest, shall be authorized to object to Claims so as to have the Bankruptcy Court determine the allowed amount, if any, of a particular Claim.

An objection to the allowance of a Claim by the Debtors must be filed with the Bankruptcy Court and served upon the holder of the Claim, as well as all parties who have requested notice in the manner prescribed in the notice to be mailed pursuant to Section 11.4 of the Plan, by no later than ninety (90) days after the Effective Date. Upon the filing and service

of an objection, the claimant whose Claim is the subject of the objection must file with the Bankruptcy court and serve upon the Debtors, the Reorganized Debtors and the party that filed the objection, a response to the objection within thirty (30) days from the date of service of the objection. The failure to file and serve such a response within such thirty (30) day period will cause the Bankruptcy Court to enter a default judgment against the non-responding claimant and thereby grant the relief requested in the objection.

Section 7.2 of the Plan provides that Claims may not be filed with the Bankruptcy Court or amended after the Confirmation Date without the prior authorization of the Bankruptcy Court. Except as otherwise provided in the Plan or by an order of the Bankruptcy Court, any new or amended Claim filed with the Bankruptcy Court after the Confirmation Date will be deemed disallowed in full and expunged without any further action by the Debtor or the Reorganized Debtor.

## **2. Creation of Reserves.**

Section 8.1 of the Plan provides that on the Effective Date, the Debtor shall establish and fund the Distribution Reserve and the Disputed Claims reserve from the remaining Estate Assets. The Disputed Claims Reserve shall be funded with cash in an amount sufficient to pay (i) the full amount of all anticipated and/or Disputed Administrative Expense Claims, Disputed Priority Tax Claims and Disputed Claims in Classes 2 and 3; (ii) with respect to all other Disputed Unsecured Claims and Subordinated Claims, the same Pro Rata Share of such Claims as if they were Allowed Claims in the lesser of (a) the amount claimed in the proof of Claim filed by the holder of such Disputed Claim, and (b) the estimated amount of such Claim as determined by order of the Bankruptcy Court; and (iii) any other amount that Debtors or after the Effective Date, the Reorganized Debtor, in its sole discretion, deems necessary and appropriate.

## **3. Distributions.**

### **(a) Generally**

Section 8.3 of the Plan provides that the distribution from the Distribution Fund will be as soon as practicable or on the Effective Date. On such date, (i) all Allowed Priority Claims, all Allowed Secured Tax Claims, all Allowed Secured Claims, and all Allowed Unsecured Claims in Classes 1, 2, 3 and 5 shall be paid in full.

When a Disputed Claim becomes an Allowed Claim, the Reorganized Debtor shall make to the holder of such Claim, from the Disputed Claims Reserve, a distribution equal to the distribution that would have been made to the holder with respect to such Claim if such Claim previously had been an Allowed Claim, without interest, less the amount of all Amounts previously distributed to holders of Allowed Claims in respect of liability owed with respect to the formerly Disputed Claim which is allocable to formerly Disputed Claim. Thereafter, unless previously paid in full, the newly Allowed Claim shall be paid from the Distribution Reserve in the same manner as all other Allowed Claims of the same Class. All amounts held in the Disputed Claims Reserve with respect to such newly Allowed Claim, in excess of the amount paid to the holder of such newly Allowed Claim, shall be considered Available Cash.

## **(b) Unclaimed Distributions**

Section 15.10 of the Plan provides that, if any property distributed by the Reorganized Debtors remain unclaimed for a period of one (1) years after it has been mailed to the address set forth on the Claimant's proof of claim or as scheduled by the Debtors, or as later filed by such creditor in the Bankruptcy Court and served on Debtors, the Reorganized Debtors and their counsel (or delivery has been attempted) or otherwise has been made available, such unclaimed property will be forfeited by the Person entitled to receive the property and the unclaimed property and the right to receive it will revert to and vest in the reorganized Debtor.

### **I. Continuing Jurisdiction of the Bankruptcy Court**

Article XIV of the Plan provides for the Bankruptcy Court to retain jurisdiction over a broad range of matters relating to the Bankruptcy Court, the Plan, the Debtor, the Reorganized Debtors and other related items. Readers are encouraged to review Article XIV to ascertain the nature of the Bankruptcy Court's post-Effective Date jurisdiction.

## **VI.**

### **CONFIRMATION AND EFFECTIVENESS OF THE PLAN**

Because the law with respect to confirmation of a plan of reorganization is very complex, creditors concerned with issues regarding confirmation of the Plan should consult with their own attorneys and financial advisors. The following discussion is intended solely for the purpose of provide basic information concerning certain confirmation issues. The Debtors cannot and do not represent that the discussion contained below is a complete summary of the law on this topic.

Many requirements must be met before the Bankruptcy Court may confirm the Plan. Some of the requirements discussed in this Disclosure Statement include acceptance of the Plan by the requisite number of holders of Claims, and whether the Plan pays such holders at least as much as they would receive in a liquidation of the Debtors' Estate under Chapter 7 of the Bankruptcy Code. These requirements, however, are not the only requirements for confirmation, and the Bankruptcy Court will not confirm the Plan unless and until it determines that the Plan satisfies all applicable requirements, including requirements not referenced in this Disclosure Statement.

### **A. Voting and Right to be Heard at Confirmation**

#### **1. Who May Support or Object to Confirmation of the Plan?**

Any party-in-interest may support or object to the confirmation of the Plan. Even entities that may not have a right to vote (e.g., entities whose claims are classified into an unimpaired Class) may still have a right to support or object to confirmation of the Plan.

## **2. Who May Vote to Accept or Reject the Plan?**

A holder of a Claim generally has a right to vote for or against the Plan if their Claim is both “allowed” for purposes of voting and classified into an impaired Class.

## **3. What is an Allowed Claim or Interest for Voting Purposes?**

As noted above, a creditors’ Claim must be “allowed” for purposes of voting in order for such claim to have the right to vote on the Plan. Generally, for voting purposes, a Claim is deemed “allowed” if (i) a proof of Claim has been filed or (ii) the Claim is identified in the Schedules as other than “disputed”, “contingent” or “unliquidated”. In either case, when an objection to a Claim has been filed, the holder of the Claim cannot vote unless the Bankruptcy Court, after notice and hearing, either overrules the objection or allows the Claim for voting purposes.

The definitions of “Allowed Claim” used in the Plan for purposes of determining whether Claim holders are entitled to receive distributions there under may differ materially from those used by the Bankruptcy Court to determine whether a particular Claim is “allowed” for purposes of voting. Holders of Claims are advised to review the definitions of “Allowed”, “Claim”, and “Disputed” set forth in Article I of the Plan to determine whether they may be entitled to receive distributions under the Plan.

## **4. What is an Impaired Claim?**

As noted above, the holder of a Claim has the right to vote on the Plan if that Claim is allowed and classified into a Class that is impaired under the Plan. A Class is impaired if the Plan alters the legal, equitable, or contractual rights of the members of that Class with respect to their claims or interests. The Debtors believe that Classes 3 and 5 are impaired under the Plan. Any party that disputes the characterization of its claim as unimpaired, may request that the Bankruptcy Court find that its Claim is impaired in order to obtain the right to vote on the Plan.

## **5. Who is Not Entitled to Vote?**

The holders of the following four types of Claims are not entitled to vote on the Plan: (i) Claims that have been disallowed; (ii) Claims that are subject to a pending objection and which have not been allowed for voting purposes; (iii) Claims in unimpaired Classes (i.e., Classes 1, 2 and 4; and (iv) Claims entitled to priority pursuant to Sections 507(a)(1),(a)(2), and (a)(7) of the Bankruptcy Code. Holders of Claims in unimpaired Classes are not entitled to vote because such Classes are deemed to have accepted the Plan. Holders of Claims entitled to priority pursuant to Sections 507(a)(1), (a)(2), and (a)(7) of the Bankruptcy Code are not entitled to vote because such claims are not placed in Classes and they are required to receive certain treatment specified by the Bankruptcy Code. Holders of Claims of the type described below, however, nevertheless may have the right to support or object to the confirmation of the Plan.

**(a) Votes Necessary to Confirm The Plan**

The Bankruptcy Court cannot confirm the Plan unless, among other things, (i) at least one (1) impaired Class has accepted the Plan without counting the votes of any insiders with that Class; and (ii) either all impaired Classes have voted to accept the Plan, or the Plan is eligible to be confirmed by “cramdown” with respect to any dissenting impaired Class.

**(b) Votes Necessary for a Class to Accept the Plan**

A Class of Claims or Interests is considered to have accepted the Plan when more than one-half (1/2) in number and at least two-thirds (2/3) in dollar amount of the claims that actually voted in that class have voted in favor of the Plan.

**(c) Treatment of Non-Accepting Classes**

As noted above, even if certain impaired Classes do not accept the proposed Plan, the Bankruptcy Court may nonetheless confirm the Plan if the non-accepting Classes are treated in the manner required by the Bankruptcy Code. The process by which non-accepting Classes are forced to be bound by the terms of a plan is commonly referred to as a “cramdown”. Specifically, the Bankruptcy Code allows the Plan to be “crammed down” on non-accepting Classes of Claims or Interests if the Plan meets the requirements of Section 1129(a)(1) through (a)(7) and 1129(a)(9) through (a)(13) of the Bankruptcy Code and if the Plan does not “discriminate unfairly” and is “fair and equitable” as those terms as defined in Section 1129(b) of the Bankruptcy Code.

**(d) Request for Confirmation Despite Non-Acceptance by Impaired Classes**

Debtors have requested that the Bankruptcy Court confirm the Plan by cramdown on any impaired Class that does not vote to accept the Plan, and Debtors believe that cramdown is appropriate under the circumstances.

**B. Liquidation Analysis**

Another confirmation requirement is the so-called “Best Interests Test” created by Section 1129(a)(7) of the Bankruptcy Code. The Best Interests Test requires that, if a holder of a Claim is in an impaired Class and does not vote to accept the Plan, such holder receive or retain an amount under the Plan not less than the amount that such holder would receive or retain if Debtors was to be liquidated under Chapter 7 of the Bankruptcy Code.

In a Chapter 7 case, a trustee would be elected or appointed to liquidate the Debtors’ assets for distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code. Under those priorities, secured creditors generally are paid first from the sales proceeds of properties securing their liens. Administrative expenses generally are next to receive payment. Unsecured creditors then are paid from any remaining sales proceeds or other unencumbered assets, accordingly to their statutory and contractual rights to priority. Unsecured creditors with the same priority share in proportion to the amount of their allowed claim in relationship to the

amount of total allowed unsecured claims. Finally, shareholders receive the balance, if any, that remains after all creditors are paid.

For the Bankruptcy Court to be able to confirm the Plan, it must find that holders of Claims who do not accept the Plan will receive at least as much under the Plan as such holders would receive under a hypothetical Chapter 7 liquidation with respect to Debtors. Debtors submit that this requirement is met here because, among other things, the Plan provides for full payment of all allowed claims in a manner that is at least as efficient as would occur in the event that the Bankruptcy Case was converted to a case under Chapter 7 of the Bankruptcy Code in addition to a contribution of other income or value otherwise not available to creditors. In fact, Debtors believes that there are a number of reasons why the Plan will result in significantly greater recoveries to holders of Allowed Claims than would result under Chapter 7 liquidation case with respect to Debtors.

First, in a Chapter 7 case, a Chapter 7 trustee with no familiarity with the Bankruptcy Case could be appointed to complete the liquidation and distribution process. Such a trustee will have no experience or knowledge of the Debtors' business, their records or assets. It is very likely that the trustee will retain new professionals, who also could be unfamiliar with the case, to assist with the liquidation of the Estate. Thus, the trustee and the trustee's professionals would have to expend considerable time and effort to "get up to speed" on the issues implicated by such liquidation and litigation (thereby duplicating the substantial efforts made to date by the Debtors, the Committee and their professionals). In the event litigation proves necessary on multiple issues, the Chapter 7 trustee would likely be in an inferior position to prosecute such actions without prior knowledge regarding Debtors' business.

Second, in the event of conversion to Chapter 7, creditors of the Estates also would have to bear administrative expenses in the form of the Chapter 7 trustee statutory fees. Pursuant to Section 326 of the Bankruptcy Code, the trustee's fees would be calculated as follows: (i) 25% on the first \$5,000.00 or less; (ii) 10% on any amount in excess of \$5,000.00 but not in excess of \$50,000.00; (iii) 5% on any amount in excess of \$50,000.00 but not in excess of \$1,000,000.00; and (iv) reasonable compensation not to exceed 3% of such moneys in excess of \$1,000,000.00, upon all moneys disbursed or turned over in the Bankruptcy Case by the trustee to parties-in-interest, excluding the Debtors, but including holders of secured Claims.

In contrast, as explained elsewhere in this Disclosure Statement, the Plan contemplates for the full payment of all allowed claims.

The tax implications and ramifications of the Plan, as well as the tax implications and ramifications of a conversion of the Bankruptcy Case to a Chapter 7 liquidation, are complex, and the Debtor can give no assurances that the statements set forth above will comport with actual results in the event of Plan confirmation or conversion to Chapter 7. Parties-in-interest may take opposing positions that, if correct, could impact the Bankruptcy Court's determinations regarding whether the Plan satisfies the Best Interests Test and provides creditors with greater consideration than that which would be received under a Chapter 7 liquidation.

The Debtors have prepared a liquidation analysis and determined this Plan provides greater consideration than liquidation. The assets are disclosed in the schedules and herein. The Debtors are able to maximize the value of the assets defined in the APA, as described in the Plan, would pay off all Allowed Priority Claims, Allowed Secured Tax Claims, Allowed Secured Claims and Allowed Unsecured Claims and the Interest Holders would retain ownership of the Reorganized Debtor as set forth in the Plan. The Debtors also believe that the costs associated with a chapter 7 trustee would erode the value recoverable from the assets and thus believes any conversion would have the dual effect of depressing values and also increasing another layer of administrative costs. The Debtor believes if its assets were liquidated under Chapter 7 the value received would not exceed the Allowed Secured Claims and holders of Allowed Unsecured Claims and Interest Owners would receive nothing. As such, no further disclosure is believed necessary.

**C. Feasibility**

In the event feasibility is required to be proven, then the Debtors contend that the assumptions regarding asset sales and values as committed to creditors can be achieved through the proposed sales contemplated by the Plan.

Distributions under the Plan will be accomplished through the sale of the assets set forth in the APA. Feasibility of the Plan, therefore, does not depend as much on the Debtor's future business operations or financial viability. However, feasibility of the Plan does depend upon the approval of the Bankruptcy Court, of the APA and the consummation of the sale of the Assets as set forth in the APA. Based on current information and as set forth in this Disclosure Statement, Debtors reasonably believe that it has sufficient Property and assets to fully satisfy all anticipated Allowed Priority Tax Claims, all Allowed Secured Claims, all Allowed Unsecured Claims. Consequently, the Plan is feasible and should provide a substantial Distribution to holders of Allowed Claims.

**D. Risks Associated with the Plan**

Both the confirmation and consummation of the Plan are subject to a number of risks. If certain standards set forth in the Bankruptcy Code are not met, the Bankruptcy Court will not confirm the Plan even if Claimholders accept the Plan. Although the Debtor believes that the Plan meets those standards, there can be no assurance that the Bankruptcy Court will reach the same conclusion. If the Bankruptcy Court were to determine that such requirements were not met, it could require the Debtor to re-solicit acceptances, which could delay and/or jeopardize confirmation of the Plan. Debtors believe that the solicitation of votes on the Plan will comply with Bankruptcy Code section 1126(b), and that the Bankruptcy Court will confirm the Plan. Debtors, however, can provide no assurance that modifications of the Plan will not be required to obtain confirmation of the Plan, or that those modifications will not require a re-solicitation of acceptances.

**E. Alternatives to Plan**

There are three possible consequences if the Plan is rejected or if the Bankruptcy Court refuses to confirm the Plan: (a) the Bankruptcy Court could dismiss the Bankruptcy Case, (b) the

Bankruptcy Case could be converted to liquidation case under Chapter 7 of the Bankruptcy Code, or (c) the Bankruptcy Court could consider an alternative Chapter 11 plan proposed by some other party.

**F. Dismissal**

If Debtors' bankruptcy case were to be dismissed, it would no longer have the protection of the Bankruptcy Court and the applicable provisions of the Bankruptcy Code, including the automatic stay under Bankruptcy Code section 362.

**G. Chapter 7 Liquidation**

If the Plan is not confirmed, it is likely that the Bankruptcy Case will be converted to a case under chapter 7 of the Bankruptcy Code, in which case a trustee would be elected or appointed to liquidate the assets of the Debtor for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. Whether a bankruptcy case is one under chapter 7 or chapter 11, holders of Secured Claims, Administrative Claims, and Priority Claims are entitled to be paid in Cash and in full before holders of Unsecured Claims receive any Distributions.

If the Bankruptcy Case is converted to Chapter 7, the present Administrative Claims may have a priority lower than priority claims generated in the chapter 7 case, such as the Chapter 7 Trustee's fees or the fees of attorneys, accountants, and other professionals engaged by the Estate.

Debtors believe that liquidation under Chapter 7 would give rise to (i) additional administrative expenses involved in the appointment of a trustee and attorneys and other professionals to assist such trustee and (ii) additional expenses and Claims, some of which would be entitled to priority that would be generated during the liquidation. In a Chapter 7 liquidation, it is very possible only holders of Allowed Secured Claims would receive any recovery on their Claims.

**H. Alternative Plan**

If an alternative plan were proposed, there would not be sale of the assets described in the APA. In comparison to Debtors' Plan, an alternative plan would not likely provide any greater return to creditors and any return could even be less due to the additional time and expense necessary to obtain approval of any alternative plan and the fact no additional capital would be contributed. Moreover, it would require far more extensive litigation over the allowance and priority of litigation claims.

**I. Effective Date**

**1. Conditions to the Occurrence of the Effective Date.**

The Plan will not become effective and operative unless and until the Effective Date occurs. Section 11.2 of the Plan sets forth certain conditions to the occurrence of the Effective



Date, which conditions are waivable by Debtors in its sole discretion without further notice of approval of the Bankruptcy Court.

If the Plan is confirmed, Debtors believe that all of the applicable conditions to the Effective Date will occur. However, because such conditions are not within the control of Debtors, there can be no assurances that the conditions ultimately will be satisfied or waived.

## **2. Non-Occurrence of Effective Date.**

The Plan provides that, if confirmation occurs but the Effective Date does not occur, unless otherwise ordered by the Bankruptcy Court, (i) the Confirmation Order will be deemed vacated; (ii) all bar dates and deadlines established by the Plan or the Confirmation Order will be deemed vacated; (iii) the Bankruptcy Case will continue as if confirmation had not occurred; and (iv) the Plan will be of no further force and effect, with the result that Debtors and other parties-in-interest will be returned to the same position as if confirmation had not occurred. The failure of the Effective Date to occur, however, will not affect the validity of any order entered in the Bankruptcy Case other than the Confirmation Order.

## **J. Effect of Confirmation: Limitation on Liability; Indemnification**

Article XII of the Plan provides that confirmation of the Plan and the occurrence of the Effective Date will have a number of important and binding effects, some of which are summarized below. Readers are encouraged to review Article XII of the Plan carefully and in its entirety to assess the various consequences of confirmation of the Plan.

### **1. Discharge and Satisfaction.**

Unless expressly provided by the Plan that the debt is to be reaffirmed and reinstated, all Claims, other debts or liabilities and/or causes of action against the Debtors or their estates shall, upon entry of the confirmation order, be forever barred, satisfied and discharged.

### **2. Injunction.**

Section 12.2 of the Plan provides that, if the Effective Date occurs, the entry of the Confirmation Order will and will be deemed to permanently enjoin all Persons that have held, currently hold or may hold a Claim or other debt or liability against the Estate, from taking any of the following actions on account of such Claim: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind against the Debtors or the Reorganized Debtors, Trustee, or the Estate, with respect to any property to be distributed under the Plan including funds or reserves held or maintained by any of them pursuant to this Plan; (ii) enforcing, levying, attaching, collecting, or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree, or order against the Debtors or the Reorganized Debtors or the Estate, with respect to any property to be distributed under the Plan, including funds or reserves held or maintained by any of them pursuant to this Plan; (iii) creating, perfecting or enforcing in any manner directly or indirectly, any lien, charge or encumbrance of any kind against Debtors or the Reorganized Debtor or the

Estate, with respect to any property to be distributed under the Plan, including funds or reserves held or maintained by any of them pursuant to this Plan; (iv) asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly against any obligation of the Debtors or the Reorganized Debtors or the Estate, with respect to any property to be distributed under the Plan, including funds or reserves held or maintained by any of them pursuant to this Plan; and (v) proceeding in any manner in any place whatsoever against the Debtors or the Reorganized Debtors or the Estate, with respect to any property to be distributed under the Plan, including funds or reserves held or maintained by any of them pursuant to this Plan in any way that does not conform to, or comply, or is inconsistent with, the provisions of this Plan. This injunction, however, will not impair any valid and enforceable rights of setoff that exist under Section 553 of the Bankruptcy Code as of the Effective Date, and will not preclude any party-in-interest from seeking to enforce or interpret the terms of the Plan through an action commenced in the Bankruptcy Court.

### **3. Limitation of Liability; Indemnification.**

Section 12.4 of the Plan provides that the “Exculpated Persons” (defined to generally include the Debtors or the Reorganized Debtors, their employees, agents, and professionals) will not have or incur any liability to any Person for any act taken or omission made in good faith in connection with or in any way related to negotiating, formulating, implementing, confirming, or consummating the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created in connection with or related to this Plan. Such Exculpated Persons will have no liability to any claimant for actions taken in good faith under or relating to the Plan including, without limitation, failure to obtain confirmation of this Plan or to satisfy any condition or conditions, or refusal to waive any condition or conditions precedent to confirmation or to the occurrence of the Effective Date. Further, the Exculpated Persons will not have or incur any liability to any claimant, party-in-interest herein, or any other Person for any act or omission in connection with or arising out of their administration of the Plan or the property to be distributed under this Plan, except for gross negligence, willful misconduct, or breach of fiduciary duty as finally determined by the Bankruptcy Court. The Plan will release, waive and modify any right, claim or cause of action existing on or as of the Petition Date against any Exculpated Person and owned or assertable by or on behalf of the creditor claimant.

### **4. Post-Effective Date Notice.**

Section 12.6 of the Plan provides that, within ten (10) Business Days after the Confirmation Date, the Reorganized Debtors will mail or cause to be mailed to holders of all Claims, a Notice that provides information regarding the occurrence of the Effective Date and other matters relative to the Plan. This mailing will include notice of the injunction entered by the Plan. Claimants are encouraged to review the notice carefully in order to determine whether to request that such post-Effective Date notices be provided to them.

## VI.

### CERTAIN FEDERAL INCOME TAX CONSEQUENCES

#### A. Introduction

Implementation of the Plan may have federal, state and local consequences to the Debtors and the Estate. No tax opinion has been sought or will be obtained with respect to any tax consequences of the Plan, and the following disclosure does not constitute and is not intended to constitute either a tax option or tax advice to any person.

This disclosure is provided for informational purposes only. Moreover, this disclosure summarizes only certain of the federal income tax consequences associated with the Plan's confirmation and implementation, and does not attempt to consider any facts or limitations applicable to any particular creditor. This disclosure also does not address state, local or foreign tax consequences or the consequences of any federal tax other than the federal income tax.

The following summary is based upon the provisions of the Internal Revenue Code of 1986, as amended (the "IRC"), the Treasury Regulations promulgated thereunder, and existing judicial decisions and published administrative rulings. In light of the numerous recent amendments to the IRC, no assurances can be given that legislative, judicial or administrative changes will not be forthcoming that would affect the accuracy of the analysis below. Any such changes could be material and could be retroactive with respect to the transactions entered into or completed prior to the enactment or promulgation thereof. Finally, the tax consequences of certain aspects of the Plan are uncertain do to a lack of applicable legal authority and may be subject to judicial or administrative interpretations that differ from the discussion below.

Creditors therefore are advised to consult with their own tax advisor regarding the tax consequences to them and to Debtors of the transactions contemplated by the plan, including federal, state, local, or foreign tax consequences.

#### B. Federal Income Tax Consequences to Debtors

##### 1. Sales of Asset.

The Debtors have sold certain of their assets and will distribute the proceeds from the sales to creditors pursuant to the terms of the Plan. In the event that the asset sales generate a net gain for federal income tax purposes, the Estate or following the Effective Date, the Reorganized Debtors will incur tax on any gain to the extent that the net gain exceeds Debtors' net operating losses ("NOLs") or to the extent of any alternative minimum tax ("AMT") liability that may not be fully offset by net operating loss carryforwards (as recomputed for AMT purposes

##### 2. Reduction of Indebtedness.

Any modification of the terms of the Debtors' indebtedness that occurs (or may be deemed to occur) as a result of the confirmation and consummation of the Plan may create actual

or constructive debt cancellation for tax purposes. Such actual or constructive debt cancellation, or COD, hereinafter is referred to as a “Debt Discharge Amount.”

In general, the IRC provides that a taxpayer who realizes a cancellation or discharge of indebtedness must include the Debt Discharge Amount in its gross income in the taxable year of discharge to the extent that the Debt Discharge Amount exceeds any consideration given for such discharge. No income from the discharge of indebtedness is realized to the extent that payment of the liability being discharged would have given rise to a deduction.

If a taxpayer is in a case under the Bankruptcy Code and a cancellation of indebtedness occurs pursuant to a confirmed plan, however, such discharge of indebtedness is specifically excluded from gross income pursuant to an exception commonly referred to as the “Bankruptcy Exception.” Although it is unclear whether the constructive cancellation of indebtedness that may occur as a result of the Plan’s implementation qualifies for exclusion from income under the Bankruptcy Exception, the Debtors’ intend to take the position that the Bankruptcy Exception in fact does apply, such that the Debt Discharge Amount is excluded from income.

### **C. Federal Income Tax Consequences to Creditors**

The tax consequences of the Plan’s confirmation and implementation to a creditor will depend on the type of consideration received by the creditor in exchange for its Claim, whether the creditor reports income on the cash or accrual method, whether the creditor receives consideration in more than one tax year of the creditor, and whether all the consideration received by the creditor is deemed to be received by that creditor in an integrated transaction.

#### **1. General.**

##### **(a) Gain/Loss on Exchange**

A creditor will recognize gain or loss on the actual or constructive exchange of such creditor’s existing Claims (other than Claims for accrued interest) for rights under the Plan, cash and any other consideration received pursuant to the Plan in an amount equal to the difference between (i) the “amount realized” in respect of such Claims; and (ii) the creditor’s tax basis in such Claims. The “amount realized” will be equal to the sum of the cash and (i) as to a cash-basis taxpayer, the fair market value of all other consideration received (or, possibly in the case of debt instruments, the issue price of such debt instruments); and (ii) as to an accrual-basis taxpayer, the face amount or issue price of any new debt instruments and fair market value of the other consideration received, less any amounts allocable to interest, unstated interest, or original issue discount.

Any holder of a Disputed Claim whose claim becomes an Allowed Claim will be taxed in the manner set forth above in the year in which such holder’s Claim is allowed.

## **(b) Tax Basis of Items Received**

The aggregate tax basis in the terms received by the holder of an Allowed Claim pursuant to the Plan, will equal the amount realized in respect of such items (other than amounts allocable to any accrued interest).

### **2. Receipt of Interest.**

Income attributable to accrued but unpaid interest will be treated as ordinary income, regardless of whether the creditor's existing Claims are capital assets in its hands. A creditor who, under its accounting method, was not previously required to include in income accrued but unpaid interest attributable to existing Claims and who exchanges its interest Claim for cash or other property pursuant to the Plan will be treated as receiving ordinary interest income to the extent of any consideration so received allocable to such interest, regardless of whether that creditor realizes an overall gain or loss as a result of the exchange of its existing Claims. A creditor who previously had included in income accrued but unpaid interest attributable to its existing Claims will recognize a loss to the extent that such accrued but unpaid interest is not satisfied in full. For purposes of the above discussion, "accrued" interest means interest, which was accrued while the underlying claim was held by the creditor.

### **3. Treatment of Litigation Proceeds.**

Generally, amounts received in litigation pursuant to a judgment or a settlement to avoid a lawsuit are characterized for federal income tax purposes in the same manner as they would have been if payment had been received without the litigation. For example, a plaintiff who has income or profits restored to the plaintiff by reason of the plaintiff's claim must take into account the litigation recoveries as if the plaintiff initially had received the money as income or profits. Therefore, whether any proceeds from settlement or prosecution of litigation by the Estate will be taxable will depend on the nature of the circumstances underlying the litigation.

### **4. Other Tax Considerations.**

#### **(a) Market Discount**

If a creditor has a lower tax basis in an obligation than its face amount, the difference may constitute market discount under Section 1276 of the IRC. (Certain obligations are excluded from the operation of this rule, such as obligations with a fixed maturity date not exceeding one year from the date of issue, installment obligations to which Section 453B of the IRC applies and, probably demand instruments). Holders in whose hands obligations are market discount bonds will be required to treat as ordinary income any gain recognized upon the exchange of such obligations to the extent of the market discount accrued during the holder's period of ownership, unless the holder has elected to include such market discount in income as it accrued.

**(b) Withholding**

The Reorganized Debtors will withhold from payments made to creditors pursuant to the Plan any amounts required by law to be withheld. In order to assist that withholding process, creditors may be required to provide general tax information to the Reorganized Debtors prior to receiving their distributions under the Plan.

**(c) Taxation of Certain Reserves**

Section 468B(g) of the IRC provides that escrow accounts, settlement funds or similar funds are subject to current taxation. That section also provides that the Internal Revenue Service will prescribe regulations for the taxation of any such account or fund, whether as a grantor trust or otherwise, and the Internal Revenue Service issued final regulations regarding settlement funds on December 18, 1992 and proposed additional regulations on February 1, 1999. However, the final regulations specifically reserve the tax treatment of settlement funds in bankruptcy, and the proposed additional regulations do not address such funds. Thus, issues regarding who is responsible for reporting income generated by the funds in any unclaimed property or in the Disputed Claims Reserve established pursuant to the Plan are uncertain. Pursuant to the Plan, the Reorganized Debtor, as the party responsible for administering such reserves, will also be required to file appropriate income tax returns and/or information returns.

**D. General Disclaimer**

Persons concerned with the tax consequences of the Plan and impositions or reservations on remedies should consult their own accountants, attorneys and/or advisors. Debtors make the above-noted disclosure of possible tax consequences for the sole purpose of alerting readers to tax issues they may wish to consider. The Debtors cannot and do not represent that the tax consequences mentioned above are completely accurate because, among other things, the tax law embodies many complicated rules that make it difficult to state accurately what the tax implications of any action might be. Neither the Debtors nor their counsel are tax experts.

**VII.**


**CONCLUSION**

Please read this Disclosure Statement and the Plan carefully and vote by using the Ballots included with this Disclosure Statement. The Debtors, *Sand Hill Foundation, LLC, Sand Hill Panola SWD #2 LLC, and Sand Hill Panola SWD #5 LLC* urge you to vote to ACCEPT the Plan.


DATED: March 28, 2011.

**DEBTORS:**

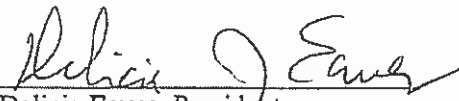
SAND HILL FOUNDATION, LLC

By:   
Delicia Eaves, President


SAND HILL PANOLA SWD #2 LLC

By:   
Delicia Eaves, President

SAND HILL PANOLA SWD #5 LLC

By:   
Delicia Eaves, President

**OPPEL & GOLDBERG, P.L.L.C.**

By:   
Jeffrey Wells Oppel  
TSBN 15291800  
1010 Lamar, Suite 1420  
Houston, Texas 77002  
713-659-9200  
713-659-9300 Fax

ATTORNEYS FOR THE DEBTORS  
SAND HILL FOUNDATION, LLC,  
SAND HILL PANOLA SWD #2 LLC,  
AND SAND HILL PANOLA SWD #5 LLC