

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO**

In re:)	Case No. 16-13815-TBM
)	
SBN FOG CAP II LLC)	Chapter 11
)	
Debtor-in-Possession.)	
<hr style="border: 0.5px solid black;"/>		
In re:)	Case No. 16-13817-TBM
)	
FOG CAP RETAIL INVESTORS LLC)	Chapter 11
)	
)	Jointly Administered Under
Debtor-in-Possession.)	Case No. 16-13815 TBM
)	

**DISCLOSURE STATEMENT IN SUPPORT OF
DEBTORS’ AMENDED JOINT PLAN OF LIQUIDATION**

I. INTRODUCTION

Debtor-in-possession SBN Fog Cap II LLC (“SBN”) and debtor-in-possession Fog Cap Retail Investors LLC (“Fog Cap” and collectively with SBN, the “Debtors”), by and through their counsel, Markus Williams Young & Zimmermann LLC, hereby submit their Disclosure Statement in accordance with 11 U.S.C. § 1125. This Disclosure Statement relates to the Debtors’ Amended Joint Plan of Liquidation dated October 11, 2016 (“Plan”) filed with the United States Bankruptcy Court for the District of Colorado in the above-captioned proceedings on October 11, 2016¹. SBN and Fog Cap are the proponents of the Plan within the meaning of 11 U.S.C. § 1129. The Plan contemplates that the Debtors will be liquidated, and allowed secured and unsecured claims will be paid by a plan trustee from the proceeds of this liquidation and any recovery from other litigation.

Purpose of Disclosure Statement: This Disclosure Statement is being furnished in connection with the solicitation of acceptances of the Plan, and the purpose of this Disclosure Statement is to provide parties entitled to vote with a description of the Plan and other information to aid them in making an informed decision as to whether to accept the Plan. A copy of the Plan and a ballot for acceptance or rejection of the Plan accompanies this Disclosure Statement. Approval of the Bankruptcy Court is required by statute but does not constitute a judgment by the Court as to the desirability of the Plan or as to the value or suitability of any consideration offered under the Plan. The Debtors prepared this Disclosure Statement to provide information sufficient to permit a creditor to make a reasonably informed decision in exercising the right to vote upon the Plan. The material here presented is intended solely for that purpose and solely for the use of known creditors of the Debtors, and, accordingly, may not be relied upon for any purpose other than determination of how to vote on the Plan.

¹ Terms not defined herein shall have the meaning and definitions as set forth in the Plan
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THE DISCLOSURE STATEMENT CONTAINS A BRIEF SUMMARY OF THE PLAN. HOWEVER, THE SUMMARY IS NOT INTENDED TO TAKE THE PLACE OF THE PLAN. EACH PARTY ENTITLED TO VOTE IS URGED TO READ THE PLAN IN FULL AND CONSULT WITH COUNSEL AND BUSINESS AND TAX ADVISORS. STATEMENTS REGARDING THE PLAN ARE SUBJECT TO AND QUALIFIED BY THE EXPRESS TERMS OF THE PLAN ITSELF IN ALL RESPECTS.

NO REPRESENTATIONS CONCERNING THE PLAN OR THE DEBTORS ARE AUTHORIZED BY THE DEBTORS OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE WHICH ARE OTHER THAN WHAT IS CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION. COURT APPROVAL OF THE ADEQUACY OF THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE APPROVAL OF THE PLAN.

Manner and Purpose of Voting: Under the Bankruptcy Code, creditors holding Allowed Claims which are in an impaired class under the Plan are entitled to vote to accept or reject the Plan. The Bankruptcy Code requires that at least two-thirds in amount and more than one-half in number of the Allowed Claims voting in each impaired class of creditors must vote to accept the Plan in order for it to be accepted by that class. In order for interest holders to accept the Plan, at least two-thirds of the voting interest holders must accept the Plan. In the event the Plan is not accepted by an impaired class of creditors or interest holders, the Court may, nevertheless, confirm the Plan if it finds that certain requirements for confirmation under the Bankruptcy Code are met. See "ACCEPTANCE OF THE PLAN AND CONFIRMATION" for a more complete explanation of the approval process.

Summary of the Plan of Liquidation: The following is a summary of the classification and treatment of claims and interests under the Plan.

<u>Class Description</u>	<u>Estimated Claims</u>	<u>Impaired</u>	<u>Statement</u>
Class 1 Allowed Priority Claims	0	No	Paid in full on Effective Date.
Class 2 Allowed Secured Claims	2	Yes	The Class 2A Claim will be paid in part, from a security retainer held by claimant, and then from any proceeds of claims in the Oklahoma Litigation recovered for the benefit of the Estates. The Class 2B Claim will be paid in full from any proceeds recovered from Fog Cutter Capital Group, Inc. in connection with any Retained Causes of Action. To the extent the recovered proceeds are insufficient to pay the Class 2A or Class 2B Claims in full from the respective identified sources, any remaining deficiency for a Class 2 Claim shall be treated as an Allowed Unsecured Claim in Class 3.

Class 3 Allowed Unsecured Claims more than \$15,000	10	Yes	Unless a holder of an Allowed Unsecured Claim agrees to reduce its claim to \$15,000 and opt into Class 4, each holder of an Allowed Unsecured Class 3 Claim shall receive its Pro Rata share of all Cash available for distribution by the Reorganized Debtors up to the full amount of each Allowed Class 3 Claim plus interest accruing per annum from the Effective Date through the date of payment in full at the federal judgment rate of interest.
Class 4 Allowed Unsecured Convenience Claims \$15,000 or less	15	Yes	Each holder of an Allowed Unsecured Claim in an amount of \$15,000 or less shall receive 50% of their Allowed Claim, paid in Cash on the Effective Date, in full satisfaction, settlement, release, and discharge of such Claim.
Class 5 Allowed Equity Interests	2	Yes	Member interests in the Debtors deemed cancelled as of the Effective Date and all management of the Debtors and Reorganized Debtor shall vest in the Plan Trustee; provided however, to the extent the Estates are solvent after satisfaction in full of all superior classes under this Plan, the holders of Allowed Class 5 Interests may receive an economic distribution under this Plan in the amounts and extent of their pre-confirmation Interests. Under no circumstance will the holders of Equity Interests regain management control and voting rights for the Debtors or Reorganized Debtors after the Effective Date.
Class 6 Late Filed Claims	0	Yes	Late claims are disallowed in full.

Estimated Distributions. The timely filed Claims against the SBN Estate total over \$18.7 million. The timely filed Claims against the Fog Cap Estate total over \$18.9 million. A substantial portion of these Claims in dollar amount are Contested Claims, duplicative Claims improperly asserted against SBN, and/or contingent Claims for reimbursement or contribution in connection with the pending Oklahoma Litigation. Since the Petition Date, the Debtors have remained focused on liquidating substantially all their leasehold assets to obtain maximum liquidation value, and attempting to settle the outstanding Contested Claims. In only six months after the Petition Date, the Debtors have successfully sold substantially all their leasehold interests, which resulted in approximately \$4.3 million in sale proceeds for the benefit of the Estates. For any remaining unexpired leases, and subject to Bankruptcy Court approval, the Debtors will either (i) sell leases and subleases to generate additional proceeds, (ii) enter into settlement agreements with master lessors settling damages for the rejection of master leases in exchange for the assignment of subleases and a full release of the Debtors from the master

lessors, or (iii) the leases will be rejected. As of the date of filing this Disclosure Statement, the property of the Estates consists of Cash in the total approximate amount of \$5,127,074. The remaining assets of the Estates (excluding those assets subject to pending sale motions, to be sold by sale motions, or settlement agreements for assignment of subleases) include: Fog Cap's indemnification claims related to the Oklahoma Litigation; and the Debtors' potential recovery for other Retained Causes of Action. Through their Plan, the Debtors are seeking substantive consolidation of these jointly administered cases for distribution purposes, to implement and carry out the terms of this Plan.

The Debtors estimate that the fees and costs necessary to satisfy the remaining administrative claims herein, including the Professional Fee Claims, will total less than \$400,000, plus the Plan Trustee's fees for administering the Estates and pursuing, prosecuting or settling pending litigation, objections to Claims or motions to disallow Claims. As a result, the Debtors estimate that there will be approximately \$4,727,074 available for distribution to unsecured creditors holding Allowed Unsecured Claims, less any Cash expended in the Causes of Action and/or Retained Causes of Action (as defined herein). The Allowed Unsecured Claims are estimated to total between \$1 million and \$5 million. Thus, depending on the outcome of the resolution of disputed claims and other Retained Causes of Action, this Plan may result in payment in full on all Allowed Priority, Allowed Secured and Allowed Unsecured Claims herein, except for those Class 4 claimants who may agree to 50% distribution on the Effective Date in lieu of waiting for all litigation to be resolved prior to receiving a distribution.

Tax Consequences. The Debtors are limited liability companies and are subject to the payment of income taxes. However, the Debtors have remained current on their ongoing tax obligations, and it is not anticipated that confirmation of the Plan will have any adverse income tax consequences to the Debtors. Creditors and interest holders may be subject to significant federal, state and local tax consequences as a result of the Plan. Because the tax consequences to each creditor may vary based on their individual circumstances, creditors are urged to consult their own tax advisors. See "CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN."

Alternatives to the Plan. If no chapter 11 plan is confirmed, the bankruptcy case could be dismissed and creditors would be entitled to pursue their claims against the Debtors. Alternatively, the bankruptcy cases could be converted to chapter 7, under which the Debtors' respective assets could be liquidated and distributed by a chapter 7 trustee. However, because substantially all of the Debtors' respective assets have been liquidated with the exception of certain litigation claims, a conversion to chapter 7 would not bring additional monies to either estate and it may lead to significant delays in a distribution. See "ALTERNATIVES TO THE PLAN."

Confirmation of the Plan. A prerequisite to confirmation of the Plan is the acceptance of the Plan by each class of claims that is impaired by the Plan. A class of impaired claims will be deemed to have accepted the Plan if a majority in number and two-thirds in dollar amount of the allowed claims of the class that actually vote have voted to accept the Plan. If confirmed, the Plan will be binding on all holders of claims and interests including holders that did not vote or holders that voted against the Plan. In addition, the Court may, under certain circumstances, and at the request of the Debtor, confirm the Plan despite the failure of one or more impaired classes of claims to accept the Plan.

It is important that you exercise your right to vote to accept or reject the Plan. A ballot, together with instructions for voting, accompanies this Disclosure Statement. You should read the ballot carefully and follow the instructions. For detailed information regarding acceptance and confirmation of the Plan and the voting process, *see* “ACCEPTANCE OF THE PLAN AND CONFIRMATION,” “VOTING INSTRUCTIONS AND PROCEDURES,” and “ADDITIONAL INFORMATION.”

II. HISTORY OF THE DEBTORS

Fog Cutter Capital Group, Inc. (“Fog Cutter”), as the sole member, formed Fog Cap Retail Investors LLC (“Fog Cap”) on August 20, 2002. Fog Cap was formed for the purpose of entering into a Portfolio Sale Agreement dated September 25, 2002, with Foot Locker Retail, Inc. (“Foot Locker”) for the purchase of certain master leases for real property leases which were operated, or formerly operated as, retail shoe stores. At that time, Fog Cap’s portfolio was managed by Egelhoff Property Advisors LLC (“Egelhoff”). The profitability of Fog Cap between 2002 and 2008 is uncertain because those books and records were retained by Fog Cutter.

In February 2008, SBN FCCG LLC (“SBN FCCG”) was formed in Delaware for the primary purpose of acquiring Fog Cutter’s sole membership interest in Fog Cap. In 2008, SBN FCCG had entered into a management agreement with Fog Cutter to perform the same services that Egelhoff had been previously performing for six years. In addition to the management agreement between Fog Cutter and SBN FCCG, those two parties also entered into a purchase agreement for the membership interest in Fog Cap, and an option agreement whereby Fog Cutter would be able to reacquire the membership interest of Fog Cap for a previously agreed upon price. Between February 2008 and approximately January 2010, Fog Cutter managed the day-to-day activities of Fog Cap. Upon default of the option agreement, and subsequent failure to cure the same, both the option agreement and the management agreement were terminated. Thereafter, Fog Cap managed its own day-to-day activities, until SBN Fog Cap II, LLC (“SBN”) was later formed and subsequently took on that role in 2014.

After SBN FCCG acquired Fog Cap, Fog Cap’s profitability between 2008 and 2011 varied significantly, and the fluctuations were attributed to the following: 1) pre-2008 practices when entering into subleases under prior management; 2) the impact of the 2008 economic crisis; and 3) the aging condition of the real property. First, before SBN FCCG acquired Fog Cap, most of the sublease terms did not match the master lease terms, often leaving properties unoccupied or unleaseable until a master lease had been extended thus often leading to several months with no income but still being responsible for master lease payments on many properties. Second, the fallout from the 2008 financial crisis resulted in many subtenants being unable to perform under the terms of their respective subleases, ceasing to operate, declaring bankruptcy, or in some instances, seeking to renegotiate the terms of their subleases. Third, with respect to aging property conditions, the master leases are long-term triple net ground leases, all with ongoing operating expenses for each property. As a result, the repair and maintenance of structural and functional systems, such as roofs, HVAC systems and parking lots, were passed on as costs to Fog Cap to cover because most sublessees could not afford and were unwilling to agree to bear this exposure.

A. Events Leading Up to Filing These Chapter 11 Cases

Notwithstanding the issues above, through substantial efforts, Fog Cap was able to locate new sublessees and negotiate rental terms for most of the properties in the portfolio, make the necessary repairs to certain buildings, and align the terms of the subleases to the respective master leases. These actions were intended to weather future recessions, and between 2011 and 2015, the lease portfolio generated a positive cash flow.

However, Fog Cap had not anticipated that one master lessor - Stratford Holding LLC (“Stratford”) - would derail their efforts through litigation. The Debtors assert that beginning in 2010, immediately after Fog Cap assumed management responsibilities from Fog Cutter, Stratford began engaging in a series of litigious conduct against Fog Cap. First, the state of Michigan initiated an eminent domain taking of a property owned by Stratford in Port Huron, Michigan, for which Fog Cap was the lessee. After lengthy and strained negotiations between Stratford, Fog Cap and the Michigan Department of Transportation, the parties entered into an administrative settlement whereby Stratford received all unpaid rent, unpaid taxes and attorneys’ fees, and Fog Cap received some lost rent. Despite the terms of the settlement, Stratford sought duplicative recovery from Fog Cap. After eighteen months, a Michigan state court found Stratford had already been paid in full and failed in its duty to reasonably mitigate its damages.

Second, in the midst of the Michigan litigation, in 2011, Fog Cap elected not to renew a master lease with Stratford for a property located in Stone Mountain, Georgia. Fog Cap conducted its own environmental testing, and the results indicated that no contamination and no environmental cleanup was necessary. According to Fog Cap, Stratford responded by demanding an unreasonable amount of additional environmental testing, and further demanding cleanup. This dispute culminated in Stratford commencing litigation in the United States District Court for the Northern District of Georgia styled *Stratford Holding, LLC v. Fog Cap Retail Investors LLC and Foot Locker Retail, Inc.*, Case No. 11-cv-03463-SCJ (the “Georgia Litigation”). The Georgia Litigation was ultimately resolved by a Settlement Agreement between Stratford, Foot Locker Retail, Inc. (“Foot Locker”) and Fog Cap dated April 15, 2015, as amended by an Addendum to the Settlement Agreement and the Georgia District Court’s Order dated February 19, 2015. The Georgia Litigation was fully settled with mutual releases and the Georgia Litigation was dismissed with prejudice under the terms of the Settlement Agreement.

Third, Stratford owns certain real property located at 307 N. MacArthur Boulevard, Warr Acres, Oklahoma (the “Oklahoma Property”). Stratford leased the Oklahoma Property to Foot Locker in 1994. In 1994 Foot Locker subleased the premises to a dry-cleaning company. Between 1994 and 2008, a now defunct dry-cleaning company operated as a subtenant at the Oklahoma Property and caused identifiable environmental contamination to the Oklahoma Property. In 2012, Stratford commenced litigation in the United States District Court for the Western District of Oklahoma against Foot Locker and Fog Cap and the prior owners and operator of the dry-cleaning company, Case No. CIV-12-0772-HE (the “Oklahoma Litigation”).

Fog Cap filed cross claims against Foot Locker for contribution and against Fog Cutter for indemnification.

The Elaine K. Hall Revocable Trust (the “Hall Trust”) is the owner of the certain real property adjacent to the Oklahoma Property (the “Hall Property”). On or about March 13, 2015, the Hall Trust commenced litigation against Stratford, Foot Locker, Fog Cap and five other defendants, in the United States District Court for the Western District of Oklahoma, Case No. CIV-15-259-W (the “Hall Litigation”). The Hall Litigation was consolidated with the Oklahoma Litigation on July 31, 2015, and the cases are proceeding under the Oklahoma Litigation. Cost recovery under CERCLA for the environmental clean-up and indemnification claims are the gravamen of the Oklahoma Litigation. These matters were stayed upon the filing of Fog Cap’s bankruptcy case.

On October 3, 2016, Foot Locker, Stratford, the Hall Trust, and William Chunga submitted a joint status report in the Oklahoma Litigation. Based on the Joint Status Report, on October 12, 2016, the United States District Court for the Western District of Oklahoma, entered an Order in the Oklahoma Litigation *inter alia* granting a request of Stratford and Foot Locker (over the objection of the Hall Trust) to further stay the Oklahoma Litigation until April 1, 2017, “except that the stay shall not prevent any party from pursuing claims against SBN FCCG LLC and Summit Investment Management, LLC, if and when those entities are added as parties to this lawsuit.” The Oklahoma Litigation is stayed as against Fog Cap through April 1, 2017, at the request of Stratford and Foot Locker. No trial has been set in the Oklahoma Litigation, and in their Joint Status Report, Stratford and Foot Locker have proposed to schedule a trial in the Oklahoma Litigation for February, 2018.

In April 2014, SBN was formed as a wholly owned subsidiary of Fog Cap for the sole purpose of selling most of the leases in the portfolio. However, the pending Oklahoma Litigation resulted in escalating claims and legal fees that eroded Fog Cap’s profitability, while simultaneously thwarting the ability of Fog Cap to sell the leases. Foot Locker sought to enjoin a proposed sale of SBN assets and the purchaser thereafter allowed a pending sale agreement to lapse. The Oklahoma Litigation coupled with the actions of Foot Locker to chill any sale of its assets were the primary catalyst for the Debtors seeking Chapter 11 relief to provide a breathing spell to liquidate their assets and distribute the proceeds under the terms of their Plan.

B. Debtors’ Post-Petition Operations

On April 20, 2016, the Debtors each filed their respective Chapter 11 Cases. Post-petition, the Debtors have been operating their businesses and managing their leasehold interests as debtors in possession, pursuant to 11 U.S.C. §§ 1107(a) and 1108. Joint administration of these Chapter 11 Cases was granted by the Court on June 2, 2016.

On June 10, 2016, Stratford filed its Motion for Relief from Stay (Docket No. 84), seeking to proceed with the Oklahoma Litigation for the stated purpose of adding non-debtor parties to that litigation. On June 23, 2016, the Debtors filed their Limited Objection to Motion for Relief from Stay and Motion to Refer Matter to Mediation Pursuant to L.B.R. 9019-2 (Docket Nos. 103 and 104), trying to get the parties to focus on resolution of claims early in these Chapter 11 Cases. Following three stipulated continuances, the Court held a preliminary hearing on September 22, 2016 for the Motion for Relief from Stay and responses thereto. The Court determined the stay did not apply to the non-debtor third parties and denied the Debtors’ request to refer the matter to mediation. *See* Minute Order at Docket No. 226. As set forth above, the Oklahoma Litigation has been stayed until April 1, 2017 to allow Stratford to add

additional parties, and the Oklahoma Litigation remains pending.

Although the docket in these Chapter 11 Cases is extensive, these cases are proceeding quickly. Since the Petition Date, the Debtors have remained focused on the liquidation of the Debtors' assets. However, the Debtors' sales were complicated by having to defend the ongoing motions, objections and other litigation initiated by the Committee, Stratford and Foot Locker in these Chapter 11 Cases.

Only nine days after the Petition Date, on April 29, 2016, SBN filed its Motion of Debtor SBN Fog Cap II LLC for an Order (a) Approving Bidding Procedures for the Sale of Substantially all of the Debtor's Assets, (b) Scheduling an Auction and Sale Hearing to Consider the Sale and Approve the Form of Manner of Notice Related Thereto; (c) Approving Payment of a Break-Up Fee and Expense Reimbursement; (d) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (e) Granting Related Relief (the "Bid Procedures Motion") (Docket No. 24). The Debtors were prepared to hold an auction of substantially all the SBN leasehold interests in early July 2016.

On May 25, 2016, an Unsecured Creditors' Committee was formed in the Fog Cap case. The Committee has only two members: Foot Locker and Stratford. The Committee, Foot Locker and Stratford, each filed Objections to the Bid Procedures Motion (Docket Nos. 39, 43 and 80), arguing *inter alia* that speculative conflicts of interest existed, the time period for an auction was too short, and a stalking horse bid was unwarranted. On June 24, 2016, the Court held a hearing on the Bid Procedures Motion. After a period of negotiation, the parties reached a consensual agreement resolving their disputes regarding the Bid Procedures Motion, and submitted a proposed stipulated order to the Court. On June 27, 2016, the Court approved the Bid Procedures Motion in part (Docket No. 110), and on June 28, 2016, approved the related Corrected Creditor Notice (Docket No. 113).

On August 10, 2016, the Debtors conducted an auction for the proposed sale of substantially all of the Debtors' leasehold assets in accordance with the stipulated bidding procedures order entered by Court. Upon conclusion of the auction, the Debtors in consultation with the Committee, determined the best and highest successful bids and backup bids. The bids and sales were subject to Court approval and closing by the parties.

After another period of negotiation, the Debtors, the Committee, the Objecting Landlords, Foot Locker and Stratford, reached a consensual proposed sale order resolving all objections. On August 22, 2016, the Court entered the Order (A) Approving the Sale of Substantially All of the Debtors' Leasehold and Related Assets, and (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (the "First Sale Order") at Docket Nos. 181 and 182. Under the First Sale Order, the outside date to close on the sale was September 20, 2016.

Before expiration of the outside date set forth in the Sale Order, the Debtors closed on the successful bids of HH Locker LLC for a leasehold interest located in Stockton, California; Nellis Corporation for a leasehold interest located in Herndon, Virginia; Alka & Naraja LLC for a leasehold interest located in Marrero, Louisiana; and Plander Realty Corporation for a leasehold interest located in Simi Valley, California. However, on September 15, 2016, Stratford, the successful bidder for forty leasehold interests, notified the Debtors of its intent to

terminate the closing on its successful bid and back up bid. The Debtors responded on the same date stating the Debtors were ready, willing and able to close. On September 16, 2016, Stratford indicated its refusal to close. The Debtors filed a Report of Sale and Notice of Stratford's Refusal to Close on the same date. *See* Report of Sale and Notice (Docket No. 216). The Debtors reserve all rights with respect to Stratford's termination of the closing, and the \$310,000 deposit received from Stratford under the Purchase Agreement remains in escrow.

Stratford's termination of the approved Purchase Agreement, which the Debtors' believed to be bad faith breach of the Purchase Agreement, created a significant predicament for the Debtors' estates. Pursuant to orders previously entered by the Bankruptcy Court, October 17, 2016 was the deadline for the Debtors to assume or reject their forty unexpired leases of real property. Stratford's election to terminate the Purchase Agreement left the Debtors with just thirty days to make the very consequential determination of which leases to assume and to reject. The Debtors and their legal counsel immediately took prompt and diligent actions to reach out to various parties in interest. These efforts were difficult given the shortened time the Debtors had and the Debtors' lack of bargaining ability. Further, difficulties in structuring and negotiating new sales were compounded because Stratford, a Committee member, is also a master lessor of several of the properties. Despite these hurdles, the Debtor and its professionals were able to negotiate and create competitive bidding for the remaining lease hold assets. These efforts resulted in four additional sale motions.

On September 30, 2016, the Debtors filed their Motion for an Order (A) Approving Purchase Agreement and Authorizing the Sale of Fifteen Leasehold Assets of the Debtors; (B) Authorizing the Sale of the Debtors' Leasehold Assets Free and Clear of All Liens, Claims, Rights, Encumbrances and Other Interests Pursuant to Bankruptcy Code Sections 363(b), 363(f) and 363(m); (C) Assuming, as Applicable, and Assigning Certain Executory Contracts and Other Interests Pursuant to Bankruptcy Code Section 365; and, (D) Granting Related Relief ("HH Sale Motion"). On the same date, the Debtors also filed their Motion for an Order (A) Approving Purchase Agreement and Authorizing the Sale of Twelve SBN Fog Cap II LLC Leasehold Assets; (B) Authorizing the Sale of Those Leasehold Assets Free and Clear of All Liens, Claims, Rights, Encumbrances and Other Interests Pursuant to Bankruptcy Code Sections 363(b), 363(f) and 363(m); (C) Assuming, as Applicable, and Assigning Certain Executory Contracts and Unexpired Leases Pursuant to Bankruptcy Code Section 365; and, (D) Granting Related Relief ("Plander Sale Motion").

After notice and a hearing, on October 14, 2016, the Bankruptcy Court entered its orders approving the HH Sale Motion and the Plander Sale Motion. On October 14, 2016, SBN closed on the approved sale to Plander Realty Corporation for twelve SBN leasehold interests. On October 21, 2016, the Debtors closed on the approved sale to HH Locker LLC for ten SBN leasehold interests and five Fog Cap leasehold interests.

In addition to the Cash generated from these sales, Fog Cap's Estate consists of leasehold interests for properties in Jacksonville, Corvallis and Pendelton, and SBN's Estate consists of leasehold interests for a property in Stillwater. The sales of SBN's leasehold interests in properties in Jonesboro and Orlando are currently pending Bankruptcy Court approval. Another sale motion for the Debtors' respective leasehold interests in properties in Jacksonville, Corvallis and Stillwater is forthcoming. Further, four SBN subleases will be assigned to master lessors as full settlement of their master lease rejection claims, subject to Bankruptcy Court approval of

two pending motions. SBN has not yet reached a settlement as to master lessor rejection damage claims for another three properties, but negotiations are ongoing and SBN still holds the leasehold interests in the related subleases.

On September 4, 2016, the Debtors filed their Joint Plan of Liquidation (Docket No. 211). On October 11, 2016, filed their Amended Joint Plan of Liquidation (Docket No. 211). This Disclosure Statement is filed in support of the Amended Joint Plan of Liquidation.

C. Other Causes of Action and Potential Recovery

The Debtors and their professionals are aware of the potential claims the Debtors may have (which the Committee highlighted in several pleadings) against several non-debtor entities. Stratford has obtained relief from stay to add parties to the Oklahoma Litigation as appropriate. To address the Committee's allegations of conflicts of interest, the Plan provides for a neutral third-party Plan Trustee to pursue the Retained Causes of Action, which include without limitation "(a) the Avoidance Actions; (b) the Oklahoma Litigation; (c) disputes regarding Professional Fee Claims; (d) the Retained Causes of Action; (e) other violations of Bankruptcy Code provisions; and (f) other causes which may be identified in discovery." The purpose of having an independent Plan Trustee pursue all the Retained Causes of Action is obvious. Other than the connections disclosed in Exhibit 1 attached hereto, the Plan Trustee has no history with the Debtors, the Debtors' members, the Committee, Foot Locker or Stratford. Further, the Plan Trustee is completely removed from the Oklahoma Litigation and other pre-petition litigation between the parties in these Chapter 11 Cases. These Chapter 11 Cases need the Plan Trustee to independently evaluate, investigate and bring appropriate claims in the Retained Causes of Action. The proposed Plan Trustee is in the best position to pursue all appropriate claims against all appropriate parties without input from the Debtors, the Committee, Stratford, Foot Locker or any other parties embroiled in litigation.

The Debtors have filed an objection to Foot Locker's proofs of claim, seeking to disallow those claims in their entirety. To date, the Debtors have not yet filed objections to other proofs of claim, but intend to do so when appropriate. While the Plan seeks substantive consolidation for distribution purposes, the Debtors contemplate that holders of duplicative claims filed against both Debtors will only have one claim against the consolidated Estates under the Plan. As soon as practicable, the Debtors also intend to seek estimation of certain contingent and unliquidated claims, and related estimation procedures. The Debtors believe their Estates are solvent, in large part due to the potential result of these claims objections and estimation proceedings.

III. DESCRIPTION OF THE AMENDED JOINT PLAN OF LIQUIDATION AND MEANS OF IMPLEMENTATION OF THE PLAN

Chapter 11 of the United States Bankruptcy Code is designed to allow for the rehabilitation of financially troubled entities or individuals. Chapter 11 allows these Debtors to retain their assets during administration of their Chapter 11 cases as debtors-in-possession and following confirmation of their Plan as a Reorganized Debtor. Once confirmation of a Plan is approved by the Court, as may be amended, the Plan is the permanent restructuring of a Debtors' financial obligations. The Plan also provides a means through which the Debtors will restructure or repay their obligations.

The Plan divides creditors into classes of similarly situated creditors. All creditors of the same Class are treated in a similar fashion. All shareholder Interests are also classified and treated alike. Each Class of creditors or interest holders is either impaired or unimpaired under the Plan. A Class is Unimpaired if the Plan leaves unaltered the legal, equitable and contractual rights to which each creditor in the class is entitled. Alternatively, a claimant is Unimpaired if the Plan provides for the cure of a default and reinstatement of the maturity date of the claim as it existed prior to the default.

Chapter 11 does not require that each holder of a Claim against the Debtors vote in favor of the Plan in order for the Court to confirm the Plan. The Plan, however, must be accepted by at least one impaired Class of Claims by a majority in number and two thirds in amount, without including insider acceptance of those Claims of such Class actually voting on the Plan. Assuming one impaired Class votes to accept the Plan, it may be confirmed over its rejection by other Classes if the Court finds that the Plan does not discriminate unfairly and is fair and equitable with respect to each Class of Claims or Interests that is impaired under and has not accepted the Plan.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation. Among other things, Section 1129 requires that the Plan be in the best interest of the holders of Claims and Interests and be feasible through a showing that confirmation will not be followed by the need for further financial reorganization of the Debtors. Each class of creditors who is impaired will have an opportunity to vote on the Plan. In the event the requisite majority of each class votes to accept the Plan, the Plan will be deemed accepted by the subject class. If a class of creditors votes to reject the Plan, the Plan may be confirmed over the rejection of the class pursuant to 11 U.S.C. § 1129(b).

A. Classification of Claims and Interests

THE FOLLOWING IS ONLY A SUMMARY OF THE PLAN. THIS SUMMARY IS NOT INTENDED TO TAKE THE PLACE OF THE PLAN. THE SUMMARY IS SUBJECT TO AND QUALIFIED BY THE TERMS OF THE PLAN IN ALL RESPECTS. ALL CAPITALIZED TERMS USED IN THIS SECTION III AND NOT DEFINED HEREIN SHALL HAVE THE MEANINGS SET FORTH IN THE PLAN.

In summary, the Plan provides for the liquidation of the Debtors and the appointment of the Plan Trustee to pay Allowed Claims of creditors in the order of their priority under the Bankruptcy Code. The Plan creates six classes of creditors and interest holders and two unclassified groups of creditors. The classes created by the Plan are as follows:

Class 1: All Allowed Priority Claims (Unimpaired).

Class 2: All Allowed Secured Claims (Impaired)

(a) Class 2A: Allowed Secured Claim of Doerner, Saunders, Daniel & Anderson LLP.

(b) Class 2B: Allowed Secured Claim of Proskauer Rose LLP.

Class 3: All Allowed Unsecured Claims in an amount of more than \$15,000 (Impaired).

Class 4: All Allowed Unsecured Convenience Claims in an amount of \$15,000 or less, or that elect to reduce their claim to \$15,000 or less (Impaired).

Class 5: All Allowed Equity Interests (Impaired).

Class 6: Late Filed Claims (Impaired).

Unclassified Claims. Under the Plan, two types of claims are not classified. The first type of claims which are not classified are Administrative Expenses. Administrative Expenses generally consist of the actual, necessary costs and expenses of preserving the Debtors' Estates, taxes incurred after the Petition Date, compensation due to Professionals of the Debtors, Committee Professionals or professionals employed by the Plan Trustee, and Liquidation Expenses. The second type of unclassified claims are Tax Claims. Tax Claims are defined by the Plan as Allowed Claims entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

Administrative Claims. Administrative Claims will be paid in Cash in the amount of such Allowed Claims on the Effective Date, except to the extent any holder agrees to a different less favorable treatment. The Administrative Claims are not entitled to vote.

With respect to Administrative Claims that are Professional Fee Claims, each Professional or Committee Professional who holds, or asserts, an Administrative Claim or Committee Member Reimbursement, respectively, that is a Professional Fee Claim for services rendered and expenses incurred prior to and including the Confirmation Date, shall be required to file with the Bankruptcy Court and serve, pursuant to Local Bankruptcy Rule 9013-1, on all Persons required to receive notice, a Final Fee Application within twenty-one (21) days after the Effective Date. Failure to timely file a final fee application as required by this section shall result in the Professional Fee Claim being forever barred and discharged to the extent such Professional Fee Claim exceeds amounts previously authorized for payment by the Bankruptcy Court. Should an objection to any Professional Fee Claim be timely filed and served by the Debtors or Reorganized Debtors through the Plan Trustee, or any other party in interest, such Professional Fee Claim shall be treated as a Contested Claim until resolved by Final Order of the Court. After Court approval by Final Order, the holder of a Professional Fee Claim shall receive Cash in the amount awarded to such professionals and entities at such times and only in accordance with a Final Order entered pursuant to 11 U.S.C. §§ 330, 331, 503(b)(2) through (6), or 1103, as applicable.

With respect to Administrative Claims that are fees due to the United States Trustee, to the extent that any fees are due to the United States Trustee pursuant to 28 U.S.C. § 1930 on the Effective Date, such fees shall be paid to the United States Trustee in full in Cash within thirty days after the Effective Date of the Plan. Any fees which become due to the United States Trustee following the Effective Date shall be paid when such fees are due and payable. In addition, the Debtors shall comply with their obligations to file post-confirmation reports with the United States Trustee following the Effective Date of the Plan.

Tax Claims. Only claims which are entitled to priority under Section 507(a)(8) of the Bankruptcy Code constitute Tax Claims under the Plan. The taxes may consist of amounts claimed by the Internal Revenue Service and the State of Colorado. The Tax Claims, if any, are expected to be *di minimus*. The holders of Tax Claims, at the election of the Plan Trustee, shall

receive either: (a) Cash equal to the amount of Allowed Tax Claims on the Effective Date; or (b) regular installment payments in Cash over a period commencing on the Effective Date and ending not later than five years after the Petition Date. The payments to holders of Tax Claims shall be at least as favorable as the treatment of Class 3 claims. The total value of the payments to the holders of Tax Claims, as of the Effective Date, shall be at least the Allowed Amount of the Tax Claims. The Tax Claims are not entitled to vote.

B. Implementation of the Plan of Liquidation

Prior to the Effective Date, the Debtors will have liquidated substantially all assets other than the Retained Causes of Action, unless settled prior to the Confirmation Date.

On the Effective Date, all assets of the Estates, including but not limited to the Retained Causes of Action, shall vest in the Reorganized Debtors, and the Plan Trustee shall be deemed to remain in exclusive control and management of all assets of the Estates and the Reorganized Debtors.

After the Effective Date, all remaining assets of the Estates shall be liquidated by the Plan Trustee. Further, any administrative taxes shall be paid after payment of any Claims by the Plan Trustee in connection with Plan administration. The duties, responsibilities and obligations of the Plan Trustee will be governed by the terms of the Plan. On and after the Effective Date, the Reorganized Debtor acting by and through the Plan Trustee shall make the payments required by this Plan to the holders of Administrative Claims, Tax Claims, Priority Claims, Allowed Secured Claims, and Allowed Unsecured Claims. The Plan payments shall be in full and complete payment, settlement and satisfaction of all Claims against the Estates and the Debtors.

C. Summary of Other Plan Provisions

The following is a summary of certain other Plan provisions. This is only a summary and is not intended to take the place of the Plan. All descriptions herein are expressly subject to and qualified by the Plan.

Substantive Consolidation. The Plan constitutes a motion for substantive consolidation of the two Plan Proponents only for purposes of Plan voting and Distributions. Confirmation of the Plan will constitute the Bankruptcy Court's granting of that motion for substantive consolidation. Substantive consolidation under the Plan does not affect valid, enforceable, and unavoidable liens, including any Allowed Secured Claims.

Continued Existence of the Debtors. The Reorganized Debtors will continue to exist following the Effective Date and will be deemed the owner of all property of the Estates.

Management. From and after the Effective Date, the Reorganized Debtors will be solely and exclusively managed by the Plan Trustee, which management may subsequently be modified in the sole discretion of the Plan Trustee and subject to Bankruptcy Court approval.

Claims Resolution. The Plan provides a procedure under which claims will be allowed or disallowed. A Claim is deemed Allowed unless a timely objection is filed. For Claims timely filed prior to the Confirmation Date or claims deemed filed under Section 1111(a) of the Code, objections must be filed and served not later than ninety (90) days following the Confirmation

Date, provided, however, that such period may be extended by order of the Court. For Professional Fee Claims, Administrative Claims or Priority Claims timely filed after the Confirmation Date, objections must be filed and served not later than sixty (60) days after the claim is filed. After the Confirmation Date, only the Plan Trustee may initiate appropriate proceedings to object to any Claim.

Executory Contracts. The Plan proposes that all executory contracts and unexpired leases not previously assumed will be rejected on the Confirmation Date. Any claims for rejection damages shall be filed no later than thirty days after the Confirmation Date, failing which those rejection damages claims will be forever barred.

Amendment and Modification of the Plan. The Plan may be amended or modified before or after the Confirmation Date, pursuant to Section 1127 of the Bankruptcy Code.

Retention of Jurisdiction. Notwithstanding entry of the Confirmation Order, or the Effective Date having occurred, the Bankruptcy Court, following Confirmation of the Plan, shall retain jurisdiction over the Plan and over the Chapter 11 Cases and proceedings or other matters arising in or relating to the Chapter 11 Cases or arising under the Bankruptcy Code to the full extent permitted by law and to the full extent necessary to carry out the purposes of the Plan.

Payment of U.S. Trustee's Fees and Filing of Reports. On the Effective Date of the Plan any quarterly fees that came due on or prior to the Effective Date will be paid as an Administrative Claim. Following the Effective Date, the Reorganized Debtors will continue to remit quarterly fees to the U.S. Trustee to the extent required by the 28 U.S.C. Section 1930(a). The Plan Trustee as the sole agent for the Reorganized Debtors shall file and provide to the U.S. Trustee all required post confirmation quarterly reports.

Final Decree. The Plan Trustee will file a motion for entry of a final decree when appropriate after the Plan has been fully administered.

IV. ACCEPTANCE OF THE PLAN AND CONFIRMATION

Under Section 1129(a) of the Code, the Court may confirm the Plan only if certain specific requirements have been met. Certain of the requirements for confirmation are dependent on the manner in which creditors and interest holders vote on the Plan. Other requirements are unrelated to the voting process.

A. Confirmation Requirements Not Related to Voting

The requirements for confirmation of the Plan which are unrelated to voting include the following:

- That the contents of the Plan comply with the applicable provisions of the Code;
- That the Plan Proponents have complied with the applicable provisions of the Code;
- That the Plan Proponents have proposed the Plan in good faith and not by any means forbidden by law;

- That all payments for services or for costs and expenses in connection with the bankruptcy case or the Plan have been approved by, or are subject to approval by, the Court as reasonable;
- That the Plan Proponents have adequately disclosed the identity and affiliations of any individual proposed to serve as an officer, director or voting trustee of the Debtors or the Estates and the nature of any compensation to be paid such individual;
- That any governmental regulatory commission with jurisdiction over rates of the Debtors, after confirmation of the Plan, has approved any rate change provided for in the Plan, or that such rate change is expressly conditioned on such approval;
- That the Plan provides for continuation, after the Effective Date, of payment of all retiree benefits at certain specified levels; and
- That confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtors or any successor, other than what is proposed in the Plan.

B. Satisfaction of Non Voluntary Requirements

The Debtors believe that each of the above conditions has been met and will seek rulings from the Court to this effect at the confirmation hearing. The identity of the officers post-confirmation, rate regulation, retiree benefits and the need for further financial reorganization are discussed below:

Identity of Officers Post-Confirmation. From and after the Effective Date, the Reorganized Debtors will be solely and exclusively managed by the Plan Trustee, which management may subsequently be modified in the sole discretion of the Plan Trustee and subject to Bankruptcy Court approval, and to the extent provided by the Reorganized Debtors' articles of organization, by-laws, and operating agreements (as amended, supplemented, or modified from time to time and then in effect). The Plan Trustee shall be compensated as his normal hourly rate of \$385 for services performed after the Effective Date. The Plan Trustee shall not be required to maintain a bond after the Effective Date. In the event the Plan Trustee resigns or becomes unable to complete the obligations set forth herein, then counsel for the Plan Trustee shall organize and conduct a meeting with the holders of Allowed Claims to select a successor Plan Trustee, which selection will be based upon a majority vote of creditors present and attending the meeting. A summary of the Plan Trustee qualifications as well as disclosure of his connections with Parties in interest is attached hereto as **Exhibit 1**.

Retiree Benefits. As a requirement for confirmation, the Code requires that all retiree benefits be paid at the level which existed prior to the Petition Date or at a rate established by the Court. The Debtors have no retiree benefits. Therefore, this requirement is not applicable.

No Further Financial Reorganization. The Code requires the Court to find that confirmation of the Plan is not likely to be followed by the need for further reorganization of the Debtors or any successor, other than what is proposed in the Plan. This Plan contemplates and provides for the liquidation of the Debtors. Therefore, the Plan Trustee believes the Plan is feasible and it is unlikely that there would be any further need for further financial reorganization.

C. The Voting Process

Requirements. The Court must also make certain findings related to the voting process and the results of the voting. The requirements for confirmation of the Plan related to voting include the following:

- At least one class of claims that is impaired under the Plan has accepted the Plan.
- In the event a member of an impaired class has not accepted the Plan, the Court must find that confirmation of the Plan is in the “best interest” of that member’s class.
- That each impaired class has accepted the Plan. However, even if fewer than all impaired classes vote to accept the Plan, the Court may confirm the Plan under certain conditions. The voting process, the counting of votes, the “best interest” test and confirmation without acceptance by all impaired classes are discussed in greater detail below.

Parties Entitled to Vote. All creditors and interest holders holding Allowed Claims in an impaired class are entitled to vote to accept or reject the Plan. A class is impaired if the legal, equitable or contractual rights attaching to the claims are modified other than by the curing of default and restating maturities or by payment in full in cash. Under the Plan, all classes are entitled to vote, except Class 5, the equity holders, and Class 6, holders of late filed Claims.

The Classification of Claims and Interests is Proper. The Code requires that a plan of reorganization place a creditor’s claim or equity holder’s interest only in a class with other claims or interests that are “substantially similar.” The Debtors believe that the Plan’s classification system meets the Bankruptcy Code standard, and will ask the Court to approve the classification system.

Counting of Votes. The Bankruptcy Code defines acceptance of a Plan by a class of claimants as acceptance by holders of two-thirds in dollar amount and a majority in number of claims of that class. For the purpose of counting votes, only those claimants who actually vote to accept or reject the Plan are considered.

The Code defines acceptance of a Plan by a class of interests (equity holders) as acceptance of two-thirds of the number of shares. Again, only those shares which actually vote are considered in determining acceptance or rejection of the Plan.

D. Acceptance by One Impaired Class

In order to confirm the Plan, the Court must find that at least one class of impaired claims has accepted the Plan. In considering whether a creditor class has accepted the Plan the Court must exclude the votes of any insider.

E. Best Interest Test

Notwithstanding acceptance of the Plan by creditors and equity holders, if an impaired claimant or interest holder does not accept the Plan, the Court must independently determine that the Plan is in the best interest of the non-accepting claimants or interest holders. To meet this test, the Court must determine that each non-accepting claimant or interest holder will receive

under the Plan, as of the Effective Date, property of a value at least equal to the value that each such claimant or holder would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code.

On and after the Effective Date, the Plan Trustee shall serve as the sole management of the Reorganized Debtors (replacing current management of the Debtors) and the administrator of this Plan. The role of the Plan Trustee in these cases is contemplated to mirror the role of a Chapter 7 trustee in a chapter 7 liquidation case. Among other enumerated powers set forth in the Plan, the Plan Trustee will have the exclusive authorization to issue, execute, deliver, and consummate the transactions contemplated by or described in this Plan in the name of and on behalf of the Debtors or the Reorganized Debtors, as the case may be, subject to Bankruptcy Court approval.

The Debtors believe that the Plan satisfies the best interest test for the following reasons:

In a liquidation under chapter 7, it is likely there could be separate trustees for each debtor and each trustee would likely hire legal and accounting advisors to assist in the performance of the trustee's duties that would be paid by the Estates. These fees and costs would be duplicative of the fees and costs already incurred by the Estates, unless the chapter 7 trustee chose to retain the professionals currently employed by the Debtors. Further, each trustee could seek and obtain enhanced compensation on a commission basis pursuant to 11 U.S.C. § 326(a). Whereas, under the Plan there will be a single trustee compensated on a lodestar hourly bases

In a liquidation under chapter 7, it is likely that any distribution to creditors could be substantially delayed while the new trustee reviewed and analyzed the matters already known to the Debtors.

As a result, the Debtors believe that their Plan satisfies the "best interest" test under the Bankruptcy Code. The Debtors believe that after considering all of the foregoing factors, creditors and interest holders in all impaired classes will receive more under the Plan than they would receive in a chapter 7 liquidation. The Debtors firmly believe that the Plan is in the best interest of each class of creditors and interest holders.

F. Acceptances of the Plan by Each Impaired Class

As a condition to confirmation, the Code requires that each impaired class accept the Plan. If each impaired class does not accept the Plan, the Court may confirm the Plan, under certain circumstances, under the "cram down" provisions. The confirmation of the Plan over the non-acceptance of an impaired class is discussed in the following section.

G. Confirmation Without Acceptance by All Classes

The "cram-down" provisions of the Bankruptcy Code permit confirmation of a the Plan under certain circumstances even if the Plan is not accepted by all impaired classes.

If a class of secured claims rejects the Plan, the Plan may be confirmed so long as the Plan provides that: (1) the holder of the claim retains its liens and receives cash payments having

a value equal to the secured claim; (2) the realization by the secured creditors of the “indubitable equivalent” of their secured claims; or (3) if the collateral is being sold free and clear of the secured claim, the lien of the secured creditor attaches to the proceeds of the sale, and the secured creditor is treated in a manner consistent with clauses (1) and (2).

If a class of unsecured claims rejects the Plan, the Plan may be confirmed so long as it provides that: (1) each holder of a claim included in the rejecting class receives or retains on account of that claim property that has a value as of the Effective Date equal to the allowed amount of such claim; or (2) that the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the Plan on account of such junior claim or interest any property.

V. ALTERNATIVES TO THE PLAN

If the Plan is not confirmed, the alternatives include: (1) dismissal of the pending chapter 11 case; (2) liquidation of the Debtors under chapter 7 of the Code; or (3) confirmation of an alternative chapter 11 plan.

A. Dismissal of Chapter 11 Cases

If no chapter 11 plan can be confirmed, the Debtors’ bankruptcy case may be dismissed. In such a case, the respective assets of the Estates would revert in the respective Debtors, and creditors would be entitled to pursue their claims against each Debtor.

B. Liquidation Under Chapter 7

Alternatively, if no chapter 11 plan can be confirmed, the Chapter 11 Cases could be converted to chapter 7. Chapter 7 trustees would be elected or appointed to liquidate the Debtor’s assets. Distribution to creditors would be made in accordance with the priorities established by the Bankruptcy Code. *See* “ACCEPTANCE OF THE PLAN AND CONFIRMATION--BEST INTEREST TEST” for a more complete description of the possible consequences of a chapter 7 liquidation on the distributions to the various creditor and interest classes. The Debtors do not believe that chapter 7 would be of any benefit to either secured or unsecured creditors because a liquidation would result in creditors receiving less than is proposed under the Plan.

C. Other Plans

Other parties in interest may propose alternative chapter 11 plans. The Committee has indicated its desire to propose a competing plan, but the Debtors remain in their exclusivity period where only the Debtors may file a plan and seek confirmation of a plan. The Debtors believe no alternative plan could be proposed that would be more beneficial to creditors than this Plan. Therefore, the Debtors do not view the “other plan” option as reasonable, and would result in excessive costs that would only diminish the distributions to creditors.

VI. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

THE FOLLOWING DISCUSSION IS A SUMMARY OF CERTAIN SIGNIFICANT FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN THAT AFFECT OR THAT

MAY AFFECT THE HOLDERS OF ALLOWED CLAIMS AND INTERESTS. UNLESS OTHERWISE PROVIDED, THIS DISCUSSION DOES NOT ADDRESS THE PARTICULAR FEDERAL INCOME TAX CONSEQUENCES THAT MAY BE RELEVANT TO CERTAIN TYPES OF TAXPAYERS SUBJECT TO SPECIAL TREATMENT UNDER THE FEDERAL INCOME TAX LAWS, NOR DOES IT DISCUSS ANY ASPECTS OF STATE, LOCAL, FOREIGN OR OTHER TAX LAWS. THE TAX CONSEQUENCES TO HOLDERS OF CLAIMS AND INTERESTS MAY VARY BASED ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN DUE TO THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN THE LAW. EXCEPT AS DESCRIBED HEREIN, THE DEBTORS HAVE NOT APPLIED FOR OR OBTAINED FROM THE INTERNAL REVENUE SERVICE ANY RULINGS OR AGREEMENTS WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN AND NO OPINION OF COUNSEL HAS BEEN REQUESTED OR OBTAINED BY THE DEBTORS WITH RESPECT THERETO. THERE CAN BE NO ASSURANCE THAT THE INTERNAL REVENUE SERVICE WILL NOT CHALLENGE CERTAIN OF THE TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED, WOULD NOT BE SUSTAINED. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH HIS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, FOREIGN OR OTHER TAX CONSEQUENCES OF THE PLAN.

A. Tax Consequences to Creditors

Generally, a creditor who receives cash or property in satisfaction of his Allowed Claim will recognize ordinary income to the extent that the amount received is allocable to interest that accrued while the claim was held by him (to the extent not previously taken into income by such person). In addition, such creditor will recognize gain or loss on the exchange equal to the difference between the creditor's tax basis in its Allowed Claim and the amount of consideration allocable thereto. The character of any recognized gain or loss will depend upon the status of the creditor, the nature of the Claim and its holding period. Each holder of a Claim is strongly urged to consult with his own tax advisor regarding the federal, state, local and foreign tax consequences of the Plan. Among the issues the holder of a Claim may desire to consider, in addition to the issues discussed above, include the extent to which the creditor is entitled to a bad debt deduction or worthless securities loss, if any, as a result of the transactions contemplated by the Plan.

Under backup withholding rules, a holder of an Allowed Claim may be subject to backup withholding at the rate of 20 percent with respect to payments made pursuant to the Plan unless such holder (a) is a corporation or comes within certain other categories and, when required, demonstrates this fact or (b) provides a correct taxpayer identification number and certifies under penalties of perjury that the taxpayer identification number is correct and that the holder is not subject to backup withholding because of failure to report all dividends and interest income.

CREDITORS OF THE DEBTORS, PARTICULARLY UNSECURED CREDITORS, ARE STRONGLY URGED TO CONSULT WITH THEIR OWN TAX ADVISORS WITH RESPECT TO THE FEDERAL AND STATE INCOME TAX CONSEQUENCES AS A RESULT OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN AND THE EFFECT

OF SUCH TAX LIABILITY ON AMOUNTS, IF ANY, DISTRIBUTABLE TO THEM UNDER THE PLAN ON ACCOUNT OF ALLOWED CLAIMS.

VII. VOTING INSTRUCTIONS AND PROCEDURE

Ballots are being sent to all known holders of Allowed Claims and Contested Claims. However, only holders of Allowed Claims (or claims which are deemed allowed or have been estimated by the Court) are entitled to vote on the Plan. A claim to which an objection has been filed is not an Allowed Claim unless and until the Court rules on the objection and any appeals which are finally determined. However, the Court may temporarily allow a claim or estimate its amount for the purpose of voting on the Plan. Unless authorized by the Court, Contested Claims are not entitled to vote on the Plan.

A. Voting by Ballot

Votes for or against the Plan may be cast only by completing, dating, signing and causing the ballot form accompanying this Disclosure Statement to be returned on or before _____, 2016. Holders of Claims which are treated in more than one class must submit separate ballots for each class. If a ballot is damaged or lost, you may obtain a new ballot from the Debtors' counsel at the address listed below in "ADDITIONAL INFORMATION—OTHER MATTERS."

You should return your ballot to the following address:

Markus Williams Young & Zimmermann, LLC
1700 Lincoln Street, Suite 4550
Denver, CO 80203
Telephone: (303) 830-0800
Facsimile: (303) 830-0809
Attn: James T. Markus and Matthew T. Faga
jmarkus@markuswilliams.com
mfaga@markuswilliams.com

B. Additional Information Not Contained in the Disclosure Statement

This Disclosure Statement has been approved by the Court as containing "adequate information." Thus, this document contains sufficient information to permit the typical claimant or interest holder to make an informed judgment about the Plan. NO OTHER REPRESENTATIONS CONCERNING THE PLAN, THE DEBTORS ARE AUTHORIZED. ANY OTHER REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR VOTE, OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT, SHOULD NOT BE RELIED UPON.

VIII. ADDITIONAL INFORMATION

A. Confirmation Hearing and Objections to Confirmation

The Court will hold a hearing on confirmation of the Plan commencing _____ 2016, in Courtroom E, United States Bankruptcy Court for the District

of Colorado, 721 19th Street, Denver, Colorado 80202. The hearing may be adjourned from time to time as announced in open court without further written notice.

Objections to confirmation of the Plan must be in writing and must be filed with the Clerk of the Bankruptcy Court and served on those parties set forth in the Order approving the Disclosure Statement no later than _____, 2016.

B. Other Matters

Additional copies of this Disclosure Statement may be obtained by written request addressed to counsel for the Debtor at the following address:


Markus Williams Young & Zimmermann, LLC
1700 Lincoln Street, Suite 4550
Denver, CO 80203
Telephone: (303) 830-0800
Facsimile: (303) 830-0809
Attn: James T. Markus and Matthew T. Faga
jmarkus@markuswilliams.com
mfaga@markuswilliams.com

X. CONCLUSION

The Debtors believe that acceptance of the Plan is in the best interest of each and every class of creditors and interest holders and strongly recommends that each creditor and interest holder vote to accept the Plan.


DATED this 2nd day of November, 2016.

SBN FOG CAP II LLC



By Steven C. Petrie, CEO
For SBN Fog Cap II LLC
Debtor-in-Possession

FOG CAP RETAIL INVESTORS LLC



By Steven C. Petrie, CEO
For Fog Cap Retail Investors LLC
Debtor-in-Possession

MARKUS WILLIAMS
YOUNG & ZIMMERMANN LLC

s/ Matthew T. Faga

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