

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

IN RE:

Chapter 11 Case

ENERGIS PETROLEUM, LLC

Case No. 15-19945-PGH

Debtor.

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**FIRST AMENDED DISCLOSURE STATEMENT IN CONNECTION WITH**  
**CHAPTER 11 PLAN OF LIQUIDATION OF**  
**ENERGIS PETROLEUM, LLC**

Dated: March 28, 2017

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**DISCLOSURE STATEMENT IN CONNECTION WITH JOINT CHAPTER 11 PLAN OF  
LIQUIDATION OF ENERGIS PETROLEUM, LLC**

**I. INTRODUCTION**

Energis Petroleum, LLC (“Energis” or the “Debtor”), provide this Disclosure Statement (the “Disclosure Statement”) to certain of the Debtor’s impaired creditors to permit such creditors to make an informed decision in voting to accept or reject the Chapter 11 Plan of Liquidation of Energis Petroleum, LLC (the “Plan”) filed on December 16, 2016 with the United States Bankruptcy Court for the Southern District of Florida, West Palm Beach Division (the “Bankruptcy Court”) in connection with the above-captioned case filed pursuant to Chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”). A copy of the Plan is attached to this Disclosure Statement as **Exhibit A**. Capitalized terms used herein but not otherwise defined have the meanings assigned to such terms in the Plan. Whenever the words “include,” “includes” or “including” are used in this Disclosure Statement, they are deemed to be followed by the words “without limitation.”

This Disclosure Statement is presented to certain Holders of Claims against the Debtor in accordance with the requirements of section 1125 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the “Bankruptcy Code”). Section 1125 of the Bankruptcy Code requires that a disclosure statement provide information sufficient to enable a hypothetical and reasonable investor, typical of the Debtor’s creditors and stockholders, to make an informed judgment whether to accept or reject the Plan. This Disclosure Statement may not be relied upon for any purpose other than that described above. This Disclosure Statement has not yet been approved by the Court, and will be considered for approval at the same hearing to consider confirmation of the Debtor’s Plan.

**THIS DISCLOSURE STATEMENT AND THE PLAN ARE AN INTEGRAL PACKAGE, AND THEY MUST BE CONSIDERED TOGETHER FOR THE READER TO BE ADEQUATELY INFORMED. THIS INTRODUCTION IS QUALIFIED IN ITS ENTIRETY BY THE REMAINING PORTIONS OF THIS DISCLOSURE STATEMENT, AND THIS DISCLOSURE STATEMENT IN TURN IS QUALIFIED, IN ITS ENTIRETY, BY THE PLAN.**

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

**THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT,**

INCLUDING ANY EXHIBITS CONCERNING THE FINANCIAL CONDITION OF THE DEBTOR AND THE OTHER INFORMATION CONTAINED HEREIN, HAS NOT BEEN SUBJECT TO AN AUDIT OR INDEPENDENT REVIEW EXCEPT AS EXPRESSLY SET FORTH HEREIN. ACCORDINGLY, THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONCERNING THE DEBTOR OR ITS FINANCIAL CONDITION IS ACCURATE OR COMPLETE. THE PROJECTED INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PRESENTED FOR ILLUSTRATIVE PURPOSES ONLY, AND BECAUSE OF THE UNCERTAINTY AND RISK FACTORS INVOLVED, THE DEBTOR'S ACTUAL RESULTS MAY NOT BE AS PROJECTED HEREIN.

ALTHOUGH AN EFFORT HAS BEEN MADE TO BE ACCURATE AND THE DEBTOR BELIEVES IN GOOD FAITH THAT THE INFORMATION HEREIN IS ACCURATE, THE DEBTOR DOES NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AND ITS EXHIBITS IS CORRECT. THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. EACH CREDITOR IS STRONGLY URGED TO REVIEW THE PLAN PRIOR TO VOTING ON IT. THE TERMS OF THE PLAN GOVERN IN THE EVENT OF ANY INCONSISTENCY WITH THE SUMMARIES IN THIS DISCLOSURE STATEMENT.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE OF THIS DISCLOSURE STATEMENT UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT UNDER ANY CIRCUMSTANCES CREATE AN IMPLICATION THAT THERE HAS NOT BEEN ANY CHANGE IN THE FACTS SET FORTH SINCE THE DATE OF THIS DISCLOSURE STATEMENT.

A STATEMENT OF THE ASSETS AND LIABILITIES OF THE DEBTOR AS OF THE DATE OF THE COMMENCEMENT OF ITS CHAPTER 11 CASE IS ON FILE WITH THE CLERK OF THE BANKRUPTCY COURT AND MAY BE INSPECTED BY INTERESTED PARTIES DURING REGULAR BUSINESS HOURS.

CONFIRMATION AND EFFECTIVENESS OF THE PLAN ARE SUBJECT TO CERTAIN MATERIAL CONDITIONS PRECEDENT IN ARTICLE 11 OF THE PLAN AND DESCRIBED HEREIN. THERE IS NO ASSURANCE THAT THE PLAN WILL BE CONFIRMED, OR IF CONFIRMED, THAT THE CONDITIONS PRECEDENT REQUIRED TO BE SATISFIED WILL BE SATISFIED OR OTHERWISE WAIVED.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE NONBANKRUPTCY LAW. ENTITIES HOLDING OR TRADING IN OR OTHERWISE

**PURCHASING, SELLING OR TRANSFERRING CLAIMS AGAINST, INTERESTS IN OR SECURITIES OF, THE DEBTOR SHOULD EVALUATE THIS DISCLOSURE STATEMENT ONLY IN LIGHT OF THE PURPOSE FOR WHICH IT WAS PREPARED.**

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

**THIS DISCLOSURE STATEMENT WILL NOT BE CONSTRUED TO BE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN. EACH CREDITOR OR INTEREST HOLDER SHOULD, THEREFORE, CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISERS AS TO ANY SUCH MATTERS CONCERNING THE SOLICITATION, THE PLAN, OR ANY RELATED MATTERS.**

Pursuant to the Bankruptcy Code, this Disclosure Statement and the Plan were filed on December 16, 2016. The Bankruptcy Court will hold a hearing on confirmation of the Plan beginning at \_\_\_\_:\_\_\_\_.m. (prevailing Eastern time) on \_\_\_\_\_, 2017, in the United States Bankruptcy Court, United States Courthouse, 1515 N. Flagler Drive Suite 801, Courtroom A, West Palm Beach, Florida 33401 (the “Confirmation Hearing”). At that Confirmation Hearing, the Bankruptcy Court will consider whether the Plan satisfies the requirements of the Bankruptcy Code, including whether the Plan is in the best interests of the claimants, and will review a ballot report concerning votes cast for acceptance or rejection of the Plan.

**A. Overview of the Plan**

**THE FOLLOWING IS A BRIEF SUMMARY OF THE TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN. THE DESCRIPTION OF THE PLAN SET FORTH BELOW CONSTITUTES A SUMMARY ONLY AND IS QUALIFIED, IN ITS ENTIRETY, BY THE PLAN. CREDITORS AND OTHER PARTIES IN INTEREST ARE URGED TO REVIEW THE MORE DETAILED DESCRIPTION OF THE PLAN CONTAINED IN SECTION IV OF THIS DISCLOSURE STATEMENT AND THE PLAN ITSELF. THE PLAN IS ATTACHED AS EXHIBIT A TO THIS DISCLOSURE STATEMENT. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN, THE PLAN CONTROLS.**

Chapter 11 is the chapter of the Bankruptcy Code primarily used for business reorganization. The fundamental purpose of a Chapter 11 case is to formulate a plan to restructure a debtor’s finances so as to maximize recoveries to its creditors. With this purpose in mind, businesses sometimes use Chapter 11 as a means to conduct asset sales and other forms of liquidation. Whether the aim is reorganization or liquidation, a Chapter 11 plan sets forth and governs the treatment and rights to be afforded to creditors and stockholders with respect to their claims against and equity interests in a debtor’s bankruptcy estate.

As an initial matter, the Plan contemplates and is predicated upon the previously approved sale of substantially all of the Debtor's assets to USA Petroleum, Inc. (the "Purchaser"). This means that the Debtor proposes to satisfy the Claims of its Creditors from the proceeds of the Sale (minus proceeds, that pursuant to Order of the Bankruptcy Court, were previously used to satisfy the senior secured debt held by Okeechobee REO, LLC (the "Lender") and the junior secured debt owed to Southeast Petro Distributors, Inc. and other distributions previously authorized by the Bankruptcy Court). Certain Claims — in particular, Administrative Expense Claims, Statutory Fees, Professional Claims and Priority Tax Claims — remain unclassified in accordance with section 1123(a)(1) of the Bankruptcy Code. The Plan assigns all other Claims and Interests as described below.

Class 1 consists of Allowed Priority Claims. We estimate this to include priority IRS Claims in the amount of \$5,294.95 which is shown in the Claims Registry as well as Florida Department of Revenue in the amount of \$255,200.76. Debtor has a pending objection concerning the Florida Department of Revenue Claim.

Class 2 consists of Allowed Secured Tax Claims. We estimate this to include \$10,237.40 owed to IRS per claim listed in Claim Registry and \$55,630.82 owed to Florida Department of Revenue. Debtor has a pending objection concerning the Florida Department of Revenue Claim.

Class 3 consists of Allowed Secured Claim of Okeechobee REO, LLC. This Claim was paid in connection with the 363 Sale.

Class 4 consists of Allowed Secured Claim of Southeast Petro Distributors, Inc. This Claim was paid in connection with the 363 Sale.

Class 5 consists of Allowed Secured Claim of PM Okeechobee, LLC. Pursuant to the Sales Order, Debtor's counsel is holding in escrow \$85,583.75 and an additional \$18,578.44 was filed in the Claims Register totaling \$104,162.19. Debtor has a pending objecting concerning PM Okeechobee, LLC Claim.

Class 6 consists of Allowed Secured Claim of Gerald and Edyth Shulman. In the Claims Register, a Claim in the amount of \$149,116.14 is file twice (Claim #5 and Claim #6). Debtor has a pending objecting concerning the duplicative claim.

Class 7 consists of Allowed General Unsecured Claims. There are multiple objections being filed in connection with scheduled and unscheduled Unsecured Claims. The Claim of National Business Communications which originally scheduled as a Secured Claim but this Honorable Court determined that it was unsecured. Debtor's counsel is holding \$508,257.53 in escrow in connection with 363 Sales Order. Scheduled Unsecured Claims total \$2,176,336.78. Additional Unscheduled Unsecured Claims (which are claims not contained in Debtor's Petition but filed as Proofs of Claim with this Honorable Court) total \$442,613.09. The total Unsecured Claims are \$3,127,207.40.

Class 8 consists of all Interests of the Debtors.

The Plan Proponents believe that the Distributions under the Plan will provide Creditors of the Debtor a greater recovery on account of Allowed Claims then would Distributions by a Chapter 7 trustee. Further, distributions under the Plan to Creditors of the Debtor would be made more quickly than distributions by a Chapter

7 trustee and a Chapter 7 trustee would charge a substantial fee, reducing the amount, if any, available for distribution on account of Allowed Claims.

ACCORDINGLY, THE PLAN PROPONENTS URGE EACH CREDITOR ENTITLED TO VOTE ON THE PLAN TO VOTE TO ACCEPT THE PLAN.

**B. Voting Instructions**

**THE PLAN PROPONENTS STRONGLY RECOMMEND THAT EACH CREDITOR ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN.**

The Bankruptcy Code entitles only holders of impaired claims or equity interests who receive some distribution under a proposed plan to vote to accept or reject that plan. Holders of claims or equity interests that are unimpaired under a proposed plan are conclusively presumed to have accepted that plan and are not entitled to vote on it. Holders of classes of claims or equity interests that will receive no distributions under a proposed plan are conclusively presumed to reject that plan and, therefore, are also not entitled to vote on it.

Class 1, Class 3, and Class 4 are Unimpaired and are therefore deemed to have accepted the Plan. As such, Class 1, Class 3 and Class 4 are not entitled to vote.

Class 2, Class 5, Class 6, Class 7 and Class 8 are Impaired by the Plan. Classes 2, 5, 6 and 7 are entitled to vote. Holders of Interests in Class 8 are deemed to have rejected the Plan and are therefore not entitled to vote. Debtor has enclosed Ballots with this Disclosure Statement to solicit votes of all Claimants in Class 2, Class 5, Class 6 and Class 7.

The Holders of Class 8 Interests will receive no distributions under the Plan. Thus, pursuant to section 1126(g) of the Bankruptcy Code, the holders of Class 8 Interests are deemed to have rejected the Plan.

**A BALLOT FOR ACCEPTANCE OR REJECTION OF THE PLAN IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASSES 2, 5, 6, and 7. BEFORE VOTING, SUCH HOLDERS SHOULD READ THIS DISCLOSURE STATEMENT AND ITS EXHIBITS, INCLUDING THE PLAN AND THE PLAN DOCUMENTS, IN THEIR ENTIRETY.**

You should use the Ballot sent to you with this Disclosure Statement to cast your vote for or against the Plan. You may not cast Ballots or votes orally or by facsimile. **In order for your Ballot to be considered by the Bankruptcy Court, it must be filed with the US Bankruptcy Court, Southern District of Florida, 1515 N. Flagler Drive, Suite 801, West Palm Beach Florida 33401 no later than \_\_\_\_\_, 2017 (the “Voting Deadline”).** If you are a Claimant in Classes 2, 5, 6, 7 and 8, and you did not receive a Ballot with this Disclosure Statement, please contact:

The Wallace Law Group, PL  
2240 W. Woolbright Road #403  
Boynton Beach, Florida 33426

Tel: (561) 877-6020  
Facsimile: (561) 244-4302  
Email: ecfwallacelaw@gmail.com

Only Holders of Allowed Claims in Impaired Classes of Claims are entitled to vote on the Plan. Any Ballot executed by the Holder of an Allowed Claim, but which does not indicate acceptance or rejection of the Plan, will not be counted as a vote to accept or reject the Plan.. Any Ballot not executed by the Holder of an Allowed Claim will not be counted as a vote to accept or reject the Plan.

**An Impaired class of Claims accepts the Plan if at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims in the Class that actually vote are cast in favor of the Plan.** Whether or not a Creditor or Interest holder votes on the Plan, such Person will be bound by the terms and treatment set forth in the Plan if the Plan is accepted by the requisite majorities of the classes of creditors and is confirmed by the Bankruptcy Court. Pursuant to the provisions of section 1126(e) of the Bankruptcy Code, the Bankruptcy Court may disallow any vote accepting or rejecting the Plan if such vote is not cast in good faith.

If the voting members of an Impaired Class do not vote unanimously for the Plan but, nonetheless, vote for the Plan by at least the requisite two-thirds (2/3) in amount and one-half (1/2) in number of Allowed Claims in that Class actually voted, the Plan, at a minimum, must provide that each Member of such Class will receive property of a value, as of the Effective Date, that is not less than the amount such Class members would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

The Debtor or other parties in interest, may dispute proofs of Claims or Interests that have been filed or that the Debtor listed as disputed in the schedules the Debtor filed with the Bankruptcy Court. Persons whose Claims are disputed may vote on or otherwise participate in distributions under the Plan only to the extent that the Bankruptcy Court allows their Claims. The Bankruptcy Court may temporarily allow a Claim for voting purposes only. Allowance of a Claim for voting purposes or disallowance of a Claim for voting purposes does not necessarily mean that all or a portion of that Claim will be allowed or disallowed for distribution purposes.

#### **C. Confirmation of the Plan by the Bankruptcy Court**

Once it is determined which Impaired Classes have or have not accepted the Plan, the Bankruptcy Court will determine whether the Plan may be confirmed.

The Plan provides for the resolution of Claims by the Disbursing Agent, the distribution of monies from Cash on hand by the Disbursing Agent to Holders of Allowed Claims in satisfaction of such Allowed Claims. Confirmation will make the Plan binding upon the Debtor, its creditors, holders of Claims and Interests, and other parties in interest regardless of whether or not they have accepted the Plan.



## **II. BACKGROUND OF THE DEBTOR**

**A. The Debtor's Business.** Debtor owned a gas station and convenience store located at 4993 US Highway 441, Okeechobee, Florida 34974 (the "Property") which was previously branded as a Texaco Station.

### **B. Events Leading to Chapter 11 Filing**

Energis commenced this Chapter 11 Case to protect the best interests of the Company and such filing was necessitated as a result of a dispute with Lender and Southeast Petro which led to the filing of foreclosure actions in the Nineteenth Circuit in and for Okeechobee County, Florida. Additionally, there was a dispute with its tenant, PM Okeechobee, LLC whereby a judgment was entered against Debtor for attorneys fees in connection with another lawsuit filed in the Nineteenth Circuit in and for Okeechobee County, Florida.

The foregoing factors ultimately led to Energis filing for protection under Chapter 11 of the Bankruptcy Code.

## **III. THE CHAPTER 11 CASE**

### **A. Commencement of The Debtor's Chapter 11 Case**

On June 1, 2015, Debtor commence a voluntary petition under Chapter 11. On October 24, 2015, the Debtor entered into an Asset Purchase Agreement (as amended, the "Asset Purchase Agreement") with Purchaser, for the sale of substantially all of the Debtor's assets (the "Purchased Assets"), for \$3,200,000.00 cash the ("Final Purchase Price"). The sale was to be conducted under the provisions of section 363 of the Bankruptcy Code. The U.S Trustee appointed a Creditors Committee ("Committee"). The Committee did not hire counsel. As such, this Disclosure Statement and Plan have not been drafted or negotiated with Committee oversight.

On January 26, 2016, this Court held a hearing to approve the aforementioned transaction (the "Sale Hearing") to approve the sale to the Purchaser (the "363 Sale"). The 363 Sale was approved by Order of the Bankruptcy Court on January 26, 2016 [D.E. 211] (the "Sale Order"). The 363 Sale closed on February 10, 2016. All of the proceeds from the 363 Sale pursuant to the Sales Order are being held in Debtor's attorney's trust account. As of the date of this First Amended Disclosure Statement, there is currently \$958,375.76 which includes escrows pursuant to the Sales Order in the amount of \$508,257.53 for the Class 5 Claim of National Business Communications, Inc. \$85,583.75 set aside for the Class 6 Claim of PM Okeechobee, LLC. The aforementioned \$958,375.76 is all the funds that Debtor has available to pay to the Creditors in this Case. There are no other assets that Debtor owns that will be liquidated.

### **B. Retained Professionals (for the Estate)**

The Bankruptcy Court authorized the Debtor to retain certain professionals to represent it and assist it in connection with this Chapter 11 Case. Specifically, the Debtor has retained, and the Bankruptcy Court has



approved on a final basis the retention of, the following professionals: (a) The Wallace Law Group as counsel for the Debtor in this Chapter 11 Case [D.E. 78]; and (b) Adam Jacobs as accountant for Debtor in this Chapter 11 Case [D.E. 79] (collectively the “Professionals”).

#### **IV. CHAPTER 11 PLAN**

**THE FOLLOWING IS A BRIEF SUMMARY OF CERTAIN OF THE MORE SIGNIFICANT MATTERS CONTEMPLATED BY OR IN CONNECTION WITH THE CONFIRMATION OF THE PLAN. THUS, THE FOLLOWING SUMMARY IS QUALIFIED IN ITS ENTIRETY BY THE PLAN, WHICH IS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT A. THIS SUMMARY ONLY HIGHLIGHTS CERTAIN SUBSTANTIVE PROVISIONS OF THE PLAN. CONSIDERATION OF THIS SUMMARY WILL NOT, NOR IS IT INTENDED TO, YIELD A THOROUGH UNDERSTANDING OF THE PLAN. SUCH CONSIDERATION IS NOT A SUBSTITUTE FOR A FULL AND COMPLETE READING OF THE PLAN. ALL HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO REVIEW THE PLAN CAREFULLY. THE PLAN, IF CONFIRMED, WILL BE BINDING ON EACH OF THE DEBTORS AND ALL HOLDERS OF CLAIMS AND INTERESTS.**

##### **A. Plan Overview**

The Plan contains four types of unclassified Claims: Administrative Expense Claims, Statutory Fees, Professional Claims and Priority Tax Claims. In addition, the Plan classifies Claims and Interests as follows: Class 1 consists of Allowed Priority Claims. Class 2 consists of Allowed Secured Tax Claims. Class 3 consists of Allowed Secured Claim of Okeechobee REO, LLC. Class 4 consists of Allowed Secured Claim of Southeast Petro Distributors, Inc. Class 5 consists of Allowed Secured Claim of PM Okeechobee, LLC. Class 6 consists of Allowed Secured Claim of Allowed Secured Claim of Gerald and Edyth Shulman. Class 7 consists of Allowed General Unsecured Claims. Class 8 consists of all Interests of the Debtors.

##### **B. Plan Summary**

The Plan contemplates and is predicated upon the previously approved sale of substantially all of the Debtor’s assets to the Purchaser. This means that the Debtor proposes to satisfy the Claims of its Creditors from Cash on hand. Certain Claims — in particular, Administrative Expense Claims, Statutory Fees, Professional Claims and Priority Tax Claims — remain unclassified in accordance with section 1123(a)(1) of the Bankruptcy Code.

##### **C. Unclassified Claims**

The Unclassified Claims consist of Administrative Expense Claims, Statutory Fees, Professional Claims and Priority Tax Claims. These Claims shall be treated as follows:

**Administrative Expense Claims.** Subject to the allowance procedures and deadlines provided in the Plan, each Holder of an Allowed Administrative Expense Claim shall receive on account of the Allowed Administrative Expense Claim, Cash equal to the unpaid portion of such Allowed Administrative Expense Claim, as soon as practicable upon the earlier to occur of the Effective Date, or ten (10) Business Days after the entry of a Final Order allowing such Administrative Expense Claim; *provided, however*, that Administrative Expense Claims with respect to liabilities incurred by the Debtor in the ordinary course of business during this Chapter 11 Case shall be paid in accordance with the terms and conditions of any agreement or course of dealing relating thereto. Proof of Administrative Expense Claims must be filed on or before the Administrative Expense Claims Bar Date. Administrative Expense Claims are Unimpaired.

**Statutory Fees.** On or before the Effective Date, all fees due and payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid in full, in Cash. Such Statutory Fees are due post confirmation until the order closing the case, or until the case is dismissed or converted

**Professional Claims.** On or prior to the deadline set by the Bankruptcy Court for Professionals to file final fee applications, each Professional shall File with the Bankruptcy Court its final fee application seeking final approval of all fees and expenses from the Petition Date through the Confirmation Hearing. Within ten (10) days after entry of a Final Order with respect to its final fee application, the Disbursing Agent shall pay the Allowed Claims of each Professional from Cash on hand.

**Priority Tax Claims.** With respect to each Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall be entitled to receive on account of such Allowed Priority Tax Claim, payment in full in Cash on the Effective Date, or as soon thereafter as is practicable, in recognition of the Bar Date for Governmental Unit Claims and applicable claims resolution process set forth in the Plan. Proof of Priority Tax Claims must be filed by the Bar Date for Governmental Unit Claims. Priority Tax Claims are Unimpaired.

In accordance with the Bankruptcy Code, the Allowed Administrative Expense Claims, Statutory Fees, Professional Claims and Allowed Priority Tax Claims are not classified. Therefore, the claimants holding the aforementioned Claims may not vote on the Plan. All Claims must be filed within the deadlines outlined in Section 9.2 of the Plan.

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

### **1. Class 1 – Allowed Priority Claims**

#### **(a) Definition of Class 1 – Allowed Priority Claims**

Priority Claims are all Claims against the Debtors entitled to priority under sections 507(a)(3), (a)(4), (a)(5), (a)(6), (a)(7) or (a)(9) of the Bankruptcy Code, that are not Priority Tax Claims.

#### **(b) Treatment of Class 1 – Allowed Priority Claims**

Each Holder of an Allowed Priority Claim shall receive on account of such Claim, Cash equal to the amount of such Allowed Priority Claim, without post-petition interest or penalty, on the later of (i) the Effective Date or as soon as practicable thereafter, or (ii) the date that is 10 Business Days after an order of the Bankruptcy Court allowing such Priority Claim becomes a Final Order. The Debtor believes that all Priority Claims have been paid in full or waived.

**2. Class 2 – Allowed Secured Tax Claims**

(a) Definition of Class 2 – Allowed Secured Tax Claims

Secured Tax Claims are all Claims against the Debtor that are secured by a Lien on, or security interest in, real property of the Debtor, or that has the benefit of rights of setoff under section 553 of the Bankruptcy Code, but only to the extent of the value of the creditor's interest in the Debtor's interest in such property, or to the extent of the amount subject to setoff, which value shall be determined as provided in section 506 of the Bankruptcy Code.

(b) Treatment of Class 2 – Allowed Secured Tax Claims

Each Holder of an Allowed Secured Tax Claim shall receive on account of such Claim, Cash equal to the amount of such Allowed Secured Tax Claim, without post-petition interest or penalty, on the later of (i) the Effective Date or as soon as practicable thereafter in recognition of the Bar Date for Governmental Unit Claims and applicable claims resolution process set forth in the Plan or (ii) the date that is 10 Business Days after an order of the Bankruptcy Court allowing such Allowed Secured Tax Claim becomes a Final Order. To the extent that a claim is filed as a Secured Tax Claim, but does not have a valid lien on any property of the estate, then the claim shall be paid as an unsecured tax claim according to its priority.

**3. Classes 5 and 6 – Allowed Secured Claims**

(a) Definition of Classes 5 and 6– Allowed Secured Claims

Secured Claims are all Claims (excluding Class 2 Allowed Secured Tax Claims and Class 3 Allowed Secured Claim of Okeechobee REO, LLC (which has already been paid) and Class 4 Allowed Secured Claim of Southeast Petro Distributors, Inc. (which has already been paid)) against the Debtor that are secured by a Lien on, or security interest in, property of the Debtor, or that has the benefit of rights of setoff under section 553 of the Bankruptcy Code, but only to the extent of the value of the creditor's interest in the Debtor's interest in such property, or to the extent of the amount subject to setoff, which value shall be determined as provided in section 506 of the Bankruptcy Code.

(b) Treatment of Classes 5 and 6 – Allowed Secured Claims

Each Holder of an such Allowed Secured Claim shall receive on account of such Claim, Cash equal to the amount of such Allowed Secured Claim, or the return of such Holder's Collateral on the later

of (i) the Effective Date or as soon as practicable thereafter or (ii) the date that is 10 Business Days after an order of the Bankruptcy Court allowing such Allowed Secured Claim becomes a Final Order.

**4. Class 7 – Allowed General Unsecured Claims**

(a) Definition of Class 7 – General Unsecured Claims

General Unsecured Claims are all Claims against the Debtor other than Administrative Expense Claims, Statutory Fees, Professional Claims, Priority Tax Claims, Priority Claims and Interests.

(b) Treatment of Class 7 – General Unsecured Claims

After satisfaction in full or satisfaction in accordance with the Plan of all Allowed Administrative Expense Claims, Professional Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Secured Tax Claims and Allowed Secured Claims, the available Cash shall be allocated pro rata among Holders of Allowed General Unsecured Claims. Each Holder of an Allowed General Unsecured Claim shall receive a Distribution or Distributions from the Disbursing Agent of its share of the available Cash allocable on account of its Allowed General Unsecured Claim, shared pro rata with the Holders of other Allowed General Unsecured Claims.

**5. Class 8 – Interests**

(a) Definition of Class 8 – Interests

Interests are interests, as of the Petition Date, arising from any and all currently owned equity interests, ownership interests or shares in the Debtor and issued by the Debtor prior to the Petition Date (including, without limitation, all capital stock, stock certificates, common stock, preferred stock, partnership interests, rights, options, warrants, contingent warrants, convertible or exchangeable securities, investment securities, subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share in the Debtor, partnership interests in the Debtor's stock appreciation rights, conversion rights, repurchase rights, redemption rights (other than rights exercised by former shareholders of the Debtor who were given promissory notes by the Debtor in respect of the shares they held), dividend rights, preemptive rights and liquidation preferences, puts, calls or commitments of any character whatsoever relating to any such equity, ownership interests or shares of capital stock of the Debtor or obligating the Debtor to issue, transfer or sell any shares of capital stock) whether or not certificated, transferable, voting or denominated "stock" or a similar security.

(b) Treatment of Class 8 – Interests

Holders of Interests will receive no Distributions on account of such Holder's Interests. On the Effective Date, all Interests of the Debtor will be cancelled.

**E. Post-Confirmation Operations of the Debtor**

On the Effective Date, the Post-Confirmation Debtor Assets shall be transferred to the Disbursing Agent, with all funds deposited into an account held by the Disbursing Agent.

As soon as practicable on or after the Final Decree, the Debtor will be dissolved for all purposes without the necessity for any further actions to be taken by or on behalf of the Debtor or payments to be made in connection therewith; *provided, however*, that the Disbursing Agent shall be authorized to file the Debtor's final tax return and shall be authorized to file and shall file with the official public office for keeping corporate records in the Debtor's state of incorporation a certificate of dissolution or equivalent document. Such a certificate of dissolution may be executed by the Disbursing Agent. From and after the Effective Date, the Debtor: (i) for all purposes shall be deemed to have withdrawn its business operations from any state in which it was previously conducting, or is registered or licensed to conduct, its business operations, and shall not be required to file any document, pay any sum or take any other action, in order to effectuate such withdrawal, (ii) shall be deemed to have cancelled pursuant to the Plan all Interests, and (iii) shall not be liable in any manner to any taxing authority for franchise, business, license or similar taxes accruing on or after the Effective Date.

**F. The Disbursing Agent**

**1. Appointment of a Disbursing Agent**

Debtor has selected Steven E. Wallace, Esq. to act as Disbursing Agent commencing on the Effective Date. The Disbursing Agent will perform the duties reserved for such person in the Plan.

**2. Segregated Funds**

The Plan will be funded with Cash on hand which is in the Disbursing Agent's trust account and is currently in the amount of \$958,375.76 which includes escrows pursuant to the Sales Order in the amount of \$508,257.53 for the Class 5 Claim of National Business Communications, Inc. \$85,583.75 set aside for the Class 6 Claim of PM Okeechobee, LLC. Cash on hand shall be used to satisfy any statutory fees owed to the Office of the United States Trustee or clerk of the Bankruptcy Court, Allowed Administrative Expense Claims, Professional Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Secured Tax Claims, Allowed Secured Claims and General Unsecured Claims.

On the Effective Date, the Disbursing Agent shall be authorized to pay from Cash on hand all statutory fees any statutory fees or Allowed Claims in accordance with the terms of the Plan. United States Trustee Fees are due post confirmation until the order closing the case, or until the case is dismissed or converted.

**G. Objections to Claims**

Subject to applicable law, and the provisions set forth in section Article IV(F), above, from and after the Effective Date, the Disbursing Agent shall have the authority to File, settle, compromise, withdraw, arbitrate or litigate to judgment Objections to Claims pursuant to applicable procedures established by the Bankruptcy Code, the Bankruptcy Rules and the Plan. Objections to any Claim, other than an Administrative Expense Claim, must be Filed and served on the claimant not later than the later of sixty (60) days after the date the Claim is Filed or sixty (60) days after the Effective Date or such other date as may be ordered from time to time by the Court (the “Claim Objection Deadline”). The Disbursing Agent shall use reasonable efforts to promptly and diligently pursue resolution of any and all Disputed Claims.

**H. Distributions Under the Plan**

Distributions to Holders of Allowed Claims shall be made: (a) at the addresses set forth in the Proofs of Claim Filed by such Holders; (b) at the addresses set forth in any written notices of address change filed with the Bankruptcy Court or delivered to the Disbursing Agent after the date on which any related Proof of Claim was Filed; or (c) at the addresses reflected in the Schedules relating to the applicable Allowed Claim if no Proof of Claim has been Filed and the Disbursing Agent has not received a written notice of a change of address.

Except as required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a Final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim. To the extent that any Allowed Claim entitled to a distribution, under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated for federal income tax purposes to the principal amount of the Allowed Claim first and then, to the extent the consideration exceeds the principal amount of the Allowed Claim, to the portion of such Allowed Claim representing accrued but unpaid interest.

No payment of Cash in an amount of less than \$10.00 shall be required to be made on account of any Allowed Claim.

Unless otherwise expressly set forth herein with respect to a specific Claim or Class of Claims, for the purpose of the provisions of this Article, the “Face Amount” of a Disputed Claim means the amount set forth on the proof of Claim unless the Disputed Claim has been estimated for distribution purposes or, in the alternative, if no proof of Claim has been timely Filed or deemed Filed, zero.

Checks issued in respect of Distributions under the Plan shall be null and void if not negotiated within ninety (90) days after the date of issuance. If any Distribution remains unclaimed for a period of 90 days after it has been delivered (or attempted to be delivered) in accordance with the Plan to the Holder entitled thereto, such Unclaimed Property shall be forfeited by such Holder. Pursuant to Local Rule 3011-1(B)(2), Unclaimed Property shall be redistributed to The Florida Bar Foundation, a not for-profit, non-religious organization, in the sole discretion of the Disbursing Agent.

On the Effective Date, or as soon thereafter as practicable, the Disbursing Agent shall distribute to the Holders of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Professional Claims an amount equal to the Allowed Claims.

In connection with the Plan and the distributions made in accordance therewith, if and to the extent applicable, the Disbursing Agent shall comply with all tax withholding and reporting requirements imposed by any Governmental Unit and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. The Disbursing Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

**I. Conditions to the Effective Date**

The Plan shall not become effective and the Effective Date shall not occur unless and until the following conditions are satisfied or, if waivable, waived:

(a) The Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably satisfactory to the Debtor and Creditors;

(b) The Bankruptcy Court shall have approved the information contained in the Disclosure Statement as adequate pursuant to section 1125 of the Bankruptcy Code;

(c) All documents, instruments and agreements, in form and substance reasonably satisfactory to the Debtor provided for under this Plan or necessary to implement this Plan, shall have been executed and delivered by the parties thereto, unless such execution or delivery has been waived by the parties benefited thereby; and

(d) The Confirmation Order shall have become a Final Order.

**K. Modification of the Plan**

Subject to the restrictions on Plan modifications set forth in section 1127 of the Bankruptcy Code, the Plan Proponents reserve the right to alter, amend or modify the Plan before its substantial consummation.

**L. Effect of Confirmation**

Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, this Chapter 11 Case and the Plan to the fullest extent permitted by law, including among other things, jurisdiction over the subject matters set forth in Article 13 of the Plan.



Except as otherwise provided in section 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any Holder of a Claim against or Interest in the Debtor, and its successors and assigns, whether or not the Claim or Interest of such Holder is Impaired under the Plan and whether or not such Holder has accepted the Plan.

**M. Retention of Jurisdiction**

Notwithstanding the entry of the Confirmation Order, the occurrence of the Effective Date and the transfer of the Post Confirmation Debtor Assets to the Disbursing Agent, the Bankruptcy Court shall retain jurisdiction over this Chapter 11 Case after the Effective Date to the fullest extent legally permissible.

**N. Treatment of Executory Contracts and Unexpired Leases**

On the Effective Date, all executory contracts and unexpired leases that exist between the Debtor and any Entity which (i) have not previously been assumed and assigned to the Purchaser pursuant to the terms of the Sale Order and Asset Purchase Agreement, or (ii) are not the subject of pending motions to assume, assume and assign or reject as of the Confirmation Date, will be deemed rejected in accordance with the provisions and requirements of section 365 of the Bankruptcy Code. The Confirmation Order (except as otherwise provided therein) shall constitute an order of the Bankruptcy Court pursuant to section 365 of the Bankruptcy Code, effective as of the Effective Date, approving such rejections. The listing of a contract or lease to be rejected pursuant to Section 7.1 of the Plan shall not constitute an admission by the Debtor that such contract or lease is an executory contract or unexpired lease or that the Debtor has any liability thereunder.

Proofs of Claim for alleged damages arising from the rejection pursuant to the Plan, the Confirmation Order or any subsequent Order of the Bankruptcy Court, of any executory contract or any unexpired lease shall be Filed with the Bankruptcy Court and served on counsel for the Debtor and Disbursing Agent not later than thirty (30) days after the service of the earlier of: (i) notice of entry of the Confirmation Order or (ii) other notice that the executory contract or unexpired lease has been rejected (including service of an Order of the Bankruptcy Court providing for such rejection). Any Holder of a Claim arising from the rejection of any executory contract or any unexpired lease that fails to File a Proof of Claim on or before the date specified in this paragraph shall be forever estopped and enjoined from asserting such Claims in any manner against the Debtor, its Estate, any other Person or Entity or the Purchaser (or Filing Proofs of Claim with respect thereof) or their Property and the Debtor shall be forever discharged from all indebtedness or liability with respect to such Claims, and, if applicable, such Holders shall not be permitted to vote on the Plan or to participate in any distribution in this Chapter 11 Case on account of such Claims or to receive further notices regarding such Claims and shall be bound by the terms of the Plan.

The Bankruptcy Court shall determine any Objections to any Proofs of Claim Filed in accordance with Section 7.2 of the Plan at a hearing to be held at a date to be determined by the Bankruptcy Court. Unsecured Claims arising out of the rejection of executory contracts and unexpired leases shall, pursuant to section 502(g) of the Bankruptcy Code, be Allowed Class 4 Claims entitled to the same treatment under the Plan received by the other Allowed Class 4 Claims.

Except and to the extent previously assumed by the Purchaser pursuant to the Sale Order and the Asset Purchase Agreement or other order of the Bankruptcy Court on or before the Confirmation Date, all employee compensation and benefit programs of the Debtor, including programs subject to sections 1114 and 1129(a)(13) of the Bankruptcy Code, entered into before or after the Petition Date and not since terminated, shall be deemed to be rejected as of the Effective Date.

Notwithstanding anything in Article 7 of the Plan to the contrary, unless assumed by the Purchaser pursuant to the Sale Order and the Asset Purchase, all employment and/or compensation agreements between the Debtor and any employee shall be deemed rejected in accordance with the provisions and requirements of section 365 of the Bankruptcy Code as of the Effective Date. There are no existing employment agreements.

**O. Preservation of Rights of Setoffs**

The Debtor, through the Disbursing Agent, may, but shall not be required to, set off against any Claim, and the payment or other distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtor may have against the Holder of such Claims; but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor of any such claim that the Debtor may have against such Holder.

**P. Distributions under the Plan.** As outlined above, there are various scenarios which are dependent on which claims and to whom such claims are paid to under the Plan. A schedule of such scenarios are outlined in Exhibit “B.”

**Q. Injunctions**

As of the Confirmation Date, except as otherwise provided in the Plan or the Confirmation Order, any Persons that have held, currently hold, or may hold a Claim, Interest, or other debt or liability that is treated pursuant to the terms of the Plan are enjoined from taking any of the following actions on account of any such Claims, Interests, debts, or liabilities, other than actions brought to enforce any rights or obligations under the Plan, against the Debtor or property of the Debtor’s Estate, the Disbursing Agent or any of the foregoing parties’ respective affiliates: (i) commencing or continuing in any manner any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any lien or encumbrance; (iv) asserting a setoff or right of recoupment of any kind against any debt, liability, or obligation; and (v) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order. Notwithstanding the foregoing, the Plan does not release, impair, waive, or serve as any impediment whatsoever of the prosecution of any avoidance or preference actions. At this time, Debtor does not anticipate filing any avoidance or preference actions.

**V. CONFIRMATION OF THE PLAN**

**A. Confirmation Hearing**

The Bankruptcy Court has scheduled the Confirmation Hearing for confirmation of the Plan for \_\_\_\_\_ at \_\_\_\_\_.m. (prevailing Eastern time) before the Honorable Paul G. Hyman, Bankruptcy Judge for the Southern District of Florida located at the United States Bankruptcy Court, United States Courthouse, 1515 N. Flagler Drive Suite 801, Courtroom A, West Palm Beach, Florida 33401. The Confirmation Hearing may be adjourned from time to time without notice except as given at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing. The Bankruptcy Court has directed that objections, if any, to the confirmation of the Plan be served on or before \_\_\_\_\_ at \_\_\_\_\_.m. (prevailing Eastern time) in the manner prescribed in the Notice accompanying this Disclosure Statement.

**B. Confirmation Standards**

For a plan to be confirmed, the Bankruptcy Court requires, among other things, that a plan be proposed in good faith and comply with the applicable provisions of Chapter 11 of the Bankruptcy Code. Section 1129 of the Bankruptcy Code also imposes requirements that at least one class of impaired claims accept a plan, that confirmation of a plan is not likely to be followed by the need for further financial reorganization, that a plan be in the best interest of creditors, and that a plan be fair and equitable with respect to each class of claims or interests which is impaired under the plan.

The Bankruptcy Court will confirm a plan only if it finds that all of the requirements enumerated in section 1129 of the Bankruptcy Code have been met. The Plan Proponents believe that the Plan satisfies all of the requirements for confirmation.

**VI. FUNDING AND FEASIBILITY OF THE PLAN**

**A. Funding of the Plan**

The Plan will be funded from: Cash on hand as part of the sale of substantially all of the Debtor's assets to Purchaser.

**B. Feasibility**

Under section 1129(a)(11) of the Bankruptcy Code, the Debtor must show that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of Debtor or any successor to Debtor (unless such liquidation or reorganization is proposed in the Plan). The Bankruptcy Code does not require a guarantee of a successful reorganization, only that the Debtor can realistically carry out the provisions of the Plan and that the Plan offers a reasonable prospect of success. See In re Haas, 162 F.3d 1087, 1090 (11<sup>th</sup> Cir. 1998); In re New Midland Plaza Assocs., 247 B.R. 877, 884-85 (Bankr. S.D. Fla. 2000). A guarantee of success is not required. New Midland Plaza Assocs., 247 B.R. at 884-85. The Plan complies with this requirement because the Debtor will use Cash on hand. The cash or property that is and will be made available to the Disbursing Agent

is sufficient to meet all obligations set forth in this Disclosure Statement and the accompanying Plan and by allowing the Debtor to liquidate within a Chapter 11 setting versus a Chapter 7 allows the Debtor and most importantly, its creditors the ability to save the fees of a Chapter 7 Trustee and its counsel. The Debtor reserves the right, if required by the Court to provide a more detailed Liquidation Analysis prior to the Confirmation Hearing, if and as necessary. Provided the Plan is confirmed and consummated, confirmation of the Plan is not likely to be followed by the liquidation, or the need for a future reorganization or liquidation, and the Plan offers more than a reasonable prospect of success. See id.; 11 U.S.C. § 1129(a)(11).

**C. Risk Factors Associated with the Plan**

Holders of Claims against the Debtor should read and consider carefully the information set forth below, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference), prior to voting to accept or reject the Plan. This information, however, should not be regarded as the only risk involved in connection with the Plan and its implementation. One risk, discussed below in the “Alternative to the Plan” section, below, is that the Bankruptcy Court does not confirm the Plan; in that scenario the Debtor’s Chapter 11 Case would likely be converted to a case under Chapter 7 of the Bankruptcy Code and a Chapter 7 trustee appointed with the attendant additional costs and delays that would be borne by the Estate and its Creditors.

**VII. ALTERNATIVES TO THE PLAN**

Although this Disclosure Statement is intended to provide information to assist a Claim Holder in determining whether to vote for or against the Plan, a summary of alternatives to confirmation of the Plan may be helpful.

If the Plan is not confirmed with respect to the Debtor, the following alternatives are available: (a) conversion of this Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code; or (b) dismissal of this Chapter 11 Case leaving creditors and interest holders to pursue available non-bankruptcy remedies. These alternatives to the Plan are very limited and not likely to benefit creditors. The most likely result if the Plan was not confirmed is that this Chapter 11 Case would be converted to a case under Chapter 7 of the Bankruptcy Code. The Debtor believes that conversion of this Chapter 11 Case to a Chapter 7 case would result in (i) significant delay in distributions to all creditors who could have received a distribution under the Plan and (ii) diminished or no recoveries for Class 4 General Unsecured Creditors. If this Chapter 11 Case is dismissed, creditors would be free to pursue non-bankruptcy remedies in their attempts to satisfy claims against the Debtor. However, in that event, creditors would be faced with the costs and difficulties of attempting, each on their own, to collect on claims from a non-operating entity with, relatively speaking, minimal fixed or hard assets.

**VIII. CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS**

A description of certain United States (“U.S.”) federal income tax consequences of the Plan is provided below. Only the potential material U.S. federal income tax consequences of the Plan to the Debtor and to a hypothetical investor typical of the Holders of certain Claims who are entitled to vote to confirm or reject the Plan

are described below (tax consequences to Holders of Interests are not discussed herein since they are not entitled to vote to confirm or reject the plan, that is, they are deemed to reject the Plan). No opinion of counsel has been sought or obtained with respect to any tax consequences of the Plan, and no tax opinion is being given in this Disclosure Statement. No rulings or determinations of the Internal Revenue Service (the “IRS”) or any other tax authorities have been obtained or sought with respect to any tax consequences of the Plan, and the discussion below is not binding upon the IRS or such other authorities. No representations are being made regarding the particular tax consequences of the confirmation and consummation of the Plan to the Debtor or to any particular Holder of Claims. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position from any discussed herein.

The discussion of the U.S. federal income tax consequences below is based on the Internal Revenue Code of 1986, as amended (the “Tax Code”), Treasury Regulations promulgated and proposed thereunder, judicial decisions, and administrative rulings and

pronouncements of the IRS and other applicable authorities, all as in effect on the date hereof. Legislative, judicial or administrative changes or interpretations enacted or promulgated in the future could alter or modify the analyses and conclusions set forth below. It cannot be predicted at this time whether any tax legislation will be enacted or, if enacted, whether any tax law changes contained therein would affect the tax consequences to the Debtor or to the Holders of Claims. Any such changes or interpretations may be retroactive and could significantly affect the U.S. federal income tax consequences discussed below.

**THIS DISCUSSION DOES NOT ADDRESS FOREIGN, STATE OR LOCAL TAX CONSEQUENCES OF THE PLAN, NOR DOES IT ADDRESS THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO SPECIAL CLASSES OF TAXPAYERS (SUCH AS FOREIGN ENTITIES, NONRESIDENT ALIEN INDIVIDUALS, PASS-THROUGH ENTITIES SUCH AS PARTNERSHIPS AND HOLDERS THROUGH SUCH PASS-THROUGH ENTITIES, S CORPORATIONS, MUTUAL FUNDS, INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, SMALL BUSINESS INVESTMENT COMPANIES, REGULATED INVESTMENT COMPANIES, CERTAIN SECURITIES TRADERS, BROKER-DEALERS AND TAX-EXEMPT ORGANIZATIONS). FURTHERMORE, ESTATE AND GIFT TAX ISSUES ARE NOT ADDRESSED HEREIN AND TAX CONSEQUENCES RELATING TO THE ALTERNATIVE MINIMUM TAX ARE NOT DISCUSSED HEREIN.**

**NO REPRESENTATIONS ARE MADE REGARDING THE PARTICULAR TAX CONSEQUENCES OF THE PLAN TO ANY HOLDER OF CLAIMS. EACH HOLDER OF CLAIMS IS STRONGLY URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THE PLAN.**

**A. U.S. Federal Income Tax Consequences to the Debtor**

**1. Cancellation of Indebtedness Income**

Generally, the discharge of a debt obligation owed by the Debtor for an amount less than the “adjusted issue price” (in most cases, the amount the Debtor received on incurring the obligation, with certain adjustments) gives rise to cancellation of debt (“COD”) income to the debtor under Tax Code Section 108, subject to certain rules and exceptions. However, when the discharge of indebtedness occurs pursuant to a plan confirmed by the Bankruptcy Court in a case under Title 11 of the United States Code (e.g., a Chapter 11 case), there is a special rule under the Tax Code which specifically excludes from the Debtor’s income the amount of such discharged indebtedness (the so-called “bankruptcy exception”). Instead, certain of the Debtor’s tax attributes otherwise available generally must be reduced by the amount of the COD income that is excluded from the Debtor’s income. Such reduction of tax attributes generally occurs on the first day of the tax year following the tax year of discharge and in the following order to the extent that such tax attributes are otherwise available to the Debtor: (i) net operating losses and net operating loss carryovers (collectively, “NOLs”), (ii) general business credits, (iii) minimum tax credits, (iv) capital loss carryovers, (v) the tax basis of Debtor’s property (both depreciable and non-depreciable), (vi) passive activity loss and credit carryovers, and (v) foreign tax credit carryovers (although there is a special rule in the Tax Code which allows the Debtor to elect to first reduce the tax basis of depreciable property before having to reduce NOLs and other attributes).

It is anticipated that the Debtor will have COD income under the Plan although any such COD income should be excluded from the Debtor’s income under the “bankruptcy exception” referenced above. This assumes that the Plan is confirmed with respect to the Debtor.

## **2. Tax Consequences on 363 Sale of Debtor’s Assets**

The sale of assets by a taxpayer will generally result in a gain or loss to the taxpayer measured by the difference between the amount realized (generally, the amount of cash and fair market value of any other property received by taxpayer plus any liabilities of the taxpayer assumed by the purchaser) and the taxpayer’s tax basis in the assets sold. It is anticipated that the Debtor will recognize gain on the sale of its assets to the Purchaser pursuant to the Asset Purchase Agreement referenced herein in an amount equal to the difference between (i) the amount of cash received, plus the liabilities of the Debtor assumed by Purchaser, and (ii) the Debtor’s tax basis in the assets sold.

## **B. U.S. Federal Income Tax Consequences to the Holders of Claims**

The U.S. federal income tax consequences of the Plan to the Holders of Claims will depend on a number of factors, including, without limitation, the following: (i) whether the Claim constitutes a “security” for U.S. federal income tax purposes; (ii) the nature and origin of the Claim; (iii) the manner in which the Holder acquired the Claim; (iv) the length of time the Claim has been held; (v) whether the Claim was acquired at a discount; (vi) whether the Holder has taken a bad debt deduction or loss with respect to the Claim (or any portion thereof) in the current year or in any prior year; (vii) whether the Holder has previously included in its taxable income accrued but unpaid interest with respect to the Claim; (viii) the Holder’s method of tax accounting; (ix) whether the Claim is an installment obligation for U.S. federal income tax purposes; and (x) the timing of any distribution under the Plan with respect to the Claim. Holders of Allowed Claims will generally recognize gain or loss with respect to their Claims in an amount equal to the difference between the amount realized (generally, the amount of cash and the fair market value of any other property received) with respect to their Claims and their tax basis in the Claims. In



general, the character of any gain or loss recognized by such Holder as capital or ordinary will depend on whether the Claim constitutes a capital asset in the hands of the Holder. To the extent that a debt instrument is acquired after its original issuance for less than the issue price of such instrument, it will have market discount. A Holder of a Claim with market discount must treat any gain recognized on the satisfaction of such Claim as ordinary income to the extent that it does not exceed the market discount that has already been accrued with respect to such Claim. In addition, Holders of Claims will recognize ordinary income to the extent they receive cash or other property that is allocable to accrued but unpaid interest that the Holder has not yet included in its income. There may also be state, local or foreign tax considerations applicable to particular Holders of Claims, none of which are discussed herein. **Holders of Claims should consult with their own tax advisors for information that may be relevant to their particular situation and circumstances and the particular tax consequences to them of the transactions contemplated by the Plan.**

**C. Information Reporting and Backup Withholding**

Certain payments, including payments in respect of accrued interest or market discount, are generally subject to information reporting by the payor to the IRS. Moreover, such reportable payments are subject to backup withholding under certain circumstances. Under the Tax Code's backup withholding rules, a U.S. holder may be subject to backup withholding at the applicable rate with respect to certain distributions or payments pursuant to the Plan, unless the holder: (i) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact, or (ii) provides a correct U.S. taxpayer identification number and certifies under penalty of perjury that the holder is a U.S. person, the taxpayer identification number is correct and that the holder is not subject to backup withholding because of a failure to report all dividend and interest income.

Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a holder's U.S. federal income tax liability, and a holder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing an appropriate claim for refund with the IRS.

**D. Importance of Obtaining Professional Tax Assistance**

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING UPON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS ABOUT THE U.S. FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN, INCLUDING WITH RESPECT TO TAX REPORTING AND RECORD KEEPING REQUIREMENTS.

**E. Discharge of Debts—Section 1141(d)(3)**

Section 1141(d)(3) of the Bankruptcy Code provides that confirmation of a plan does not discharge a debtor if—




- (A) the plan provides for the liquidation of all or substantially all of the property of the estate;
- (B) the debtor does not engage in business after consummation of the plan; and
- (C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

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March 28, 2017

ENERGIS PETROLEUM, LLC, a Florida limited liability company

By:   
\_\_\_\_\_

Keith Duffy, Manager

THE WALLACE LAW GROUP, PL

By: /s/ Steven E. Wallace

Steven E. Wallace, Esq.

Florida Bar Number 585661

Exhibit “A”

Amended Chapter 11 Plan

Exhibit “B”

Distribution Projections.