IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re: ABENGOA BIOENERGY BIOMASS OF KANSAS, LLC, Debtor.	Chapter 11 Case No. 16-10446

DISCLOSURE STATEMENT DATED AS OF APRIL 14, 2017 FOR DEBTOR'S PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

DLA PIPER LLP (US)

Vincent P. Slusher (TX 00785480)
David E. Avraham (IL 6308516)
1717 Main Street, Suite 4600
Dallas, Texas 75201-4629
Telephone: (214) 743-4500
Facsimile: (214) 743-4545
vince.slusher@dlapiper.com
david.avraham@dlapiper.com

R. Craig Martin (DE 005032)
Kaitlin M. Edelman (DE 005924)
1201 North Market Street, Suite 2100
Wilmington, Delaware 19801
Telephone: (302) 468-5700
Facsimile: (302) 394-2341
craig.martin@dlapiper.com
kaitlin.edelman@dlapiper.com

Co-Counsel to the Debtor

ARMSTRONG TEASDALE LLP

Christine L. Schlomann, KS # 18712
Richard W. Engel, Jr. MO #34641
Erin M. Edelman, MO #67374
2345 Grand Blvd., Suite 1500
Kansas City, Missouri 64108
Telephone: (816) 472-3153
Facsimile: (816) 221-0786
cschlomann@armstrongteasdale.com
rengel@armstrongteasdale.com
eedelman@armstrongteasdale.com

Co-Counsel to the Debtor

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THE DEBTOR RECOMMENDS THAT CREDITORS SUPPORT AND VOTE TO ACCEPT THE PLAN. IT IS THE OPINION OF THE DEBTOR THAT THE TREATMENT OF CREDITORS UNDER THE PLAN CONTEMPLATES A GREATER RECOVERY THAN THAT WHICH IS LIKELY TO BE ACHIEVED UNDER OTHER ALTERNATIVES FOR THE REORGANIZATION OR LIQUIDATION OF THE DEBTOR. ACCORDINGLY, THE DEBTOR BELIEVES THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF CREDITORS.

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EXHIBITS

Exhibit 1	Debtor's Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code, dated April 14, 2017
Exhibit 2	Liquidation Analysis

I. INTRODUCTION

The Debtor submits this disclosure statement (the "***Disclosure Statement***"), pursuant to section 1125 of title 11 of the United States Code (the "***Bankruptcy Code***") and Rule 3017 of the Federal Rules of Bankruptcy Procedure, as now in effect or as hereafter amended (the "***Bankruptcy Rules***"), in connection with the solicitation of votes on its proposed *Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, dated as of April 14, 2017 (the "***Plan***") and attached hereto as **Exhibit 1**. The Debtor believes that confirmation and implementation of the Plan is in the best interests of the Debtor's Estate, Creditors and all other interested parties.

This Disclosure Statement and the other documents described herein are being furnished by the Debtor to Creditors in the Debtor's Chapter 11 Case pending before the United States Bankruptcy Court for the District of Kansas (the "***Bankruptcy Court***"). This Disclosure Statement is intended to provide adequate information of a kind, and in sufficient detail, to enable the Debtor's Creditors to make an informed judgment about the Plan, including whether to accept or reject the Plan. This Disclosure Statement sets forth certain information regarding (i) the Debtor's prepetition operating and financial history; (ii) the Debtor's need for relief under chapter 11 of the Bankruptcy Code; (iii) significant events that have occurred during the Debtor's Chapter 11 Case; (iv) the terms of the Plan; (v) the manner in which distributions will be made under the Plan; (vi) certain effects of confirmation of the Plan; (vii) certain risk factors associated with the Plan; and (viii) the confirmation process and the voting procedures that holders of Claims entitled to vote under the Plan must follow for their votes to be counted.

This Disclosure Statement is subject to the Bankruptcy Court's approval, as containing information of a kind, and in sufficient detail, adequate to enable a hypothetical, reasonable investor typical of each of the Classes whose votes are being solicited to make an informed judgment with respect to the Plan. **THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION WITH RESPECT TO THE MERITS OF THE PLAN. ALL CREDITORS ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND ITS EXHIBITS CAREFULLY AND IN THEIR ENTIRETY BEFORE DECIDING TO VOTE TO ACCEPT OR REJECT THE PLAN.**

The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. To the extent that the information provided in this Disclosure Statement and the Plan (including any Plan Supplements) conflict, the terms of the Plan (including any Plan Supplements) will control. Terms not otherwise specifically defined herein have the meanings attributed to them in the Plan. Each definition in this Disclosure Statement and in the Plan includes both the singular and plural. Headings are for convenience or reference and shall not affect the meaning or interpretation of this Disclosure Statement.

A. Overview of Chapter 11 and the Plan Confirmation Process.

Under chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize or liquidate its business for the benefit of itself, its creditors and its equity interest holders. In addition to permitting the rehabilitation or liquidation of a debtor, another goal of chapter 11 is to promote equality of treatment for similarly situated creditors and similarly situated equity

interest holders with respect to the distribution of a debtor's assets. The commencement of a chapter 11 case creates an estate that comprises all of the legal and equitable interests of the debtor as of the petition date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

The consummation of a plan is the principal objective of a chapter 11 case. A plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan by the bankruptcy court binds the debtor, any issuer of securities under the plan, any person acquiring property under the plan and any creditor or equity interest holder of a debtor. Subject to certain limited exceptions, the order approving confirmation of a plan discharges a debtor from any debt that arose prior to the date of confirmation of the plan and substitutes therefor the obligations specified under the confirmed plan.

Certain holders of claims against and interests in a debtor are permitted to vote to accept or reject the plan. Prior to soliciting acceptances of the proposed plan, however, section 1125 of the Bankruptcy Code requires a debtor to prepare, and obtain bankruptcy court approval of, a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical investor of the relevant classes to make an informed judgment regarding the plan. This Disclosure Statement is presented to holders of Claims against the Debtor entitled to vote under section 1125 of the Bankruptcy Code in connection with the Debtor's solicitation of votes on the Plan.

B. Recommendation of the Debtor and Plan Overview.

The Debtor believes that the Plan, which provides for, among other things, the creation of a Liquidating Trust for the benefit of the Debtor's Creditors, will allow for a prompt resolution of the Debtor's Chapter 11 Case and will achieve the best possible result for Creditors and other interested parties. The following is a brief overview of the Plan and is qualified by reference to the Plan itself.

C. Summary of Classification and Treatment of Claims Under the Plan.

A brief summary of the Classes established under the Plan, including the treatment and voting rights of each Class, is set forth below. A complete description of the treatment of each class is set forth in Article III of the Plan and section V.A. of this Disclosure Statement. Parties should refer to those sections for a complete description of the proposed treatment for each class.

Class	Claims & Interest	Status	Treatment	Entitled to Vote	Estimated Recovery
1	Secured Claims	Unimpaired	Paid in Full	No (deemed to accept)	100%
2	General Unsecured Claims	Impaired	Pro Rata Share of Liquidating Trust Cash	Yes	95%
3	Intercompany Claims	Impaired	No Distribution	No (deemed to reject)	0%
4	Equity Interests	Impaired	No Distribution	No (deemed to reject)	0%

D. Summary of Voting Requirements for Plan Confirmation.

1. In General.

Creditors should refer only to this Disclosure Statement and the Plan to determine whether to vote to accept or reject the Plan. Under the Bankruptcy Code, only holders of Claims that are "impaired" are entitled to vote to accept or reject the Plan. Under section 1124 of the Bankruptcy Code, a class of claims or interests is deemed to be "impaired" under a plan unless (1) the plan leaves unaltered the legal, equitable and contractual rights to which such claim or interest entitles the holder thereof; or (2) notwithstanding any legal right to an accelerated payment of such claim or interest, the plan, among other things, cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before the default. An impaired class of creditors votes to accept a plan if the holders of at least two-thirds (2/3) in dollar amount, and more than one-half (1/2) in number, of those creditors that actually cast ballots vote to accept such plan. Those classes that are not impaired are not entitled to vote and are deemed to accept a plan. Those classes that are not entitled to a distribution and will not retain property under a plan are deemed to reject a plan.

A class of interest holders is deemed to accept a plan if the holders of at least two-thirds (2/3) in amount of those interest holders that actually cast ballots vote to accept such plan. A class of interest holders is impaired, not entitled to vote, and deemed to reject the plan if the plan treats such holders by providing that they will retain no property and receive no distributions under the plan.

Any Claim in an Impaired Class that is subject to a pending objection or is scheduled as unliquidated, disputed or contingent is not entitled to vote unless the holder of such Claim has obtained an order of the Bankruptcy Court temporarily allowing the Claim for the purpose of voting on the Plan.

Pursuant to the Bankruptcy Code, only creditors who actually vote on the Plan will be counted for purposes of determining whether the required number of acceptances have been obtained. Failure to deliver a *properly completed ballot* by the Voting Deadline (as defined below) will result in an abstention; consequently, the vote will neither be counted as an acceptance or rejection of the Plan.

2. Impaired Classes Entitled to Vote.

Only the Claims in Class 2 (General Unsecured Claims) are Impaired and are entitled to vote to accept or reject the Plan.

3. Unimpaired Classes Deemed to Accept the Plan.

Under Bankruptcy Code section 1126(f), only the Claims in Class 1 (Secured Claims) are Unimpaired and the vote of holders of such Claims in these Classes will not be solicited.

4. Certain Classes Are Deemed to Reject the Plan and Do Not Vote.

Under Bankruptcy Code section 1126(g), the following Classes will receive no Distributions and are deemed to have rejected the Plan: Class 3 (Intercompany Claims) and Class 4 (Equity Interests). The vote of holders of such Claims and Equity Interests in these Classes will not be solicited.

5. Voting Deadline.

If a Creditor holds a Claim classified in a voting Class of Claims under the Plan, the Creditor's acceptance or rejection of the Plan is important and must be in writing and submitted on time. The voting deadline is [•], 2017 at 5:00 p.m. (prevailing Central Time) (the "***Voting Deadline***").

6. Voting Instructions.

IN ORDER FOR A VOTE TO BE COUNTED, THE BALLOT MUST BE PROPERLY COMPLETED IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND RETURNED TO THE VOTING AGENT BY THE VOTING DEADLINE.

7. Ballots.

Creditors must use only the ballot or ballots sent to them with the notice of this Disclosure Statement. If a Creditor has Claims in more than one Class, it should receive multiple ballots. IF A CREDITOR RECEIVES MORE THAN ONE BALLOT, THEN THE CREDITOR SHOULD ASSUME THAT EACH BALLOT IS FOR A SEPARATE CLAIM AND SHOULD COMPLETE AND RETURN ALL OF THEM.

8. Additional Information.

If you have any questions about (a) the procedure for voting on your Claim, (b) the package of materials that you have received, (c) the amount of your Claim, (d) obtaining or replacing a ballot, or (e) obtaining an additional copy of the Plan, this Disclosure Statement, or any exhibits to such documents, please contact David E. Avraham, co-counsel to the Debtor, at (312) 368-4000 or david.avraham@dlapiper.com.

II. BACKGROUND INFORMATION REGARDING THE DEBTOR

The Debtor in this Chapter 11 Case, Abengoa Bioenergy Biomass of Kansas, LLC, is a limited liability company organized under the laws of the State of Kansas. The Debtor's ultimate parent is Abenoga, S.A. ("***Abengoa***"). Abengoa is a Spanish company founded in 1941 and has been a leading engineering and clean technology company with operations in many countries worldwide. Currently, Abengoa is registered in the Mercantile Register of Seville in volume 573, folio 69, sheet SE-1507. As of the end of 2015, Abengoa was the parent company of approximately 700 other companies around the world, including 577 subsidiaries, 78 associates, 31 joint ventures, and 211 Spanish partnerships (*uniones temporales de empresa*) (collectively, the "***Abengoa Group***" or the "***Company***").

Over the course of the Abengoa Group's 70-year history, it has developed a unique and integrated business model that applies its accumulated engineering expertise to promoting sustainable development solutions, including delivering new methods for generating solar power, developing biofuels, producing potable water from seawater, and efficiently transporting electricity to customers in the following sectors: energy, telecommunications, transport, water, utilities, environmental, industrial, and services. A cornerstone of the Company's business model has been investment in proprietary technologies, particularly in areas with relatively high barriers to entry. The Company supplies engineering projects under the 'turnkey' contract modality and operates assets that generate renewable energy, produce biofuel, manage water resources, desalinate sea water, and treat sewage. The Abengoa Group's business is organized under the following three activities:

- Engineering and construction: includes the traditional engineering activities in the energy and water sectors, with more than 70 years of experience in the market and the development of solar technology. The Abengoa Group is specialized in carrying out complex turnkey projects for thermo-solar plants, solar-gas hybrid plants, conventional generation plants, biofuels plants, and water infrastructures, as well as large-scale desalination plants, and transmission lines, among others.

- Concession-type infrastructures: groups together the Company's extensive portfolio of proprietary concession assets that generate revenues governed by long-term sales agreements, such as take-or-pay contracts, tariff contracts, or power purchase agreements. This activity includes the operation of electric energy generation plants (solar, cogeneration, or wind), desalination plants, and transmission lines. These assets generate low demand risk, and the Company focuses on operating them as efficiently as possible.

- Industrial production: covers Abengoa Group's businesses with a high technological component, such as development of biofuels technology. The Company holds an important leadership position in these activities in the geographical markets in which it operates.

Abengoa initiated the expansion of its global operations in the 1960s, first to South America and then into the United States. With a total investment of $3.3 billion, the United States has become one of Abengoa's largest markets in terms of sales volume, particularly from developing solar, bioethanol, and water projects. Abengoa has achieved a leading position within the renewable energy construction and technology sector in the United States through its efforts in developing commercial scale concentrated solar power and producing advanced biofuels on a commercial scale. Abengoa's US business operations can be organized into the following distinct business units:

- Abengoa's bioenergy companies ("***Bioenergy***"), among other things, had been a leader in the biofuel production sector and, in addition, specialized in the development of new technologies geared towards the second-generation production of biofuels, and biochemical products;

- Abengoa's engineering, procurement, and construction companies are dedicated to the engineering and construction of electrical, mechanical, and instrumental infrastructures in the energy, industrial, water management, and services sectors, as well as the development of innovative technology for Abengoa's businesses;

- Abengoa's solar companies specialize in the development and operation and maintenance of solar energy plants, mainly using solar thermal technology; and

- Abengoa's water companies specialize in the development and operation and maintenance of facilities aimed at generating, transporting, treating, and managing potable water, including desalination and water treatment, as well as purification plants.

The U.S. operations of the Industrial Production segment consisted of both "first generation" operations and a "second generation" technology development and R&D projects. The first-generation operations largely consisted of production facilities that converted food-based grains (corn, sorghum/milo) into ethanol at several locations throughout the U.S.

The second-generation operations consisted of research and development into converting non-food-based matter into ethanol. In 2007, the United States Department of Energy (the "***DOE***") awarded the Debtor that certain Assistance Agreement DE-FC36-07GO17028 (as subsequently amended, the "***ABBK Award***") under the authority of the Energy Policy Act of 2005 (the "***Energy Policy Act***"). The funds provided under the ABBK Award, totaling approximately $95 million, assisted the Debtor in the construction, start-up and commissioning of its 25 million gallon nameplate cellulosic ethanol production facility (the "***Ethanol Plant***"). In addition, the Debtor constructed an electricity cogeneration plant (the "***Cogeneration Plant***") adjacent to the Hugoton Plant, and also owned approximately 400 acres of adjacent land, all located at 1043 Road P., Hugoton, Kansas 67951 in Stevens County (collectively, the "***Hugoton Plant***"). The costs related to the construction of the Hugoton Plant exceeded $850 million, with a portion of those costs covered by the funds from the ABBK Award. However, ultimately the Hugoton Plant was not fully completed and never achieved operational status. As more fully described below, the plant was sold during the course of this Chapter 11 Case.

Additionally, on September 28, 2011, the DOE, acting pursuant to Section 1705 of the Energy Policy Act of 2005, issued a loan guarantee under its Loan Guarantee Program (the "***LGP***"), providing available financing to ABBK up to $132,400,000 related to construction of the Ethanol Plant (the "***LGP Loan***"). Over the life of the LGP Loan, ABBK drew approximately $45 million from the facility. The LGP Loan was repaid in full, inclusive of principal, interest and penalties, prior to the filing of this Chapter 11 Case in March 2015.

Unlike the LGP Loan, issued pursuant to the LGP and pursuant to customary loan terms and conditions, the ABBK Award may be characterized as an equity investment in the Debtor, with an aim toward achieving certain objectives under the Energy Policy Act. The ABBK Award contains no repayment terms or payment enforcement rights; no maturity date; no interest provisions; and no other terms or conditions typical of a loan agreement, in contradistinction to the LGP Loan. Further, the ABBK Award includes certain provisions requiring DOE's oversight and/or approvals. As an investment to further serve the goals and

objectives of the United States government, the Debtor proposes to treat the DOE's asserted claims and interests in this Chapter 11 Case as Equity Interests under the Plan.

III. EVENTS LEADING TO THE CHAPTER 11 FILING

A. Economic Challenges of the Bioenergy Business

The year preceding the Chapter 11 Case was marked by enormous disruption in the bioenergy industry. In the year leading up to the Petition Date, the average Crush Spread, a key measure of the profitability of corn ethanol production, based on Chicago Board of Trade (CBOT) corn and ethanol prices was approximately $0.4400/gallon. This compares drastically to the prior twelve-month period, in which Crush Spreads averaged over $0.9194/gallon. As a result of this deterioration in the market, a number of bioenergy facilities were forced to close, while others suffered a dramatic reduction in demand.

For the Debtor, while the initial costs of production of cellulosic ethanol gallons for the Ethanol Plant were higher than the first-generation production referred to above, these higher upfront costs came with production incentives, including (i) the federal cellulosic production credit, which provided a credit of approximately $1.50/gallon produced; and (ii) the California low-carbon intensity fuel credit, which provided a credit of approximately $1.20/gallon produced. These credits were intended to assist cellulosic ethanol producers in achieving commercial production and profitability.

B. Economic Challenges of the Global Abengoa Business and Abengoa's Global Restructuring

At the height of Spain's economic crisis in early 2013, as the Spanish government struggled to pay the interest due on sovereign debt, subsidies for solar and wind power companies were dramatically curtailed. The cutbacks devastated Spain's renewable energy sector and many companies failed. Though Abengoa was able to survive this financial crisis, it was forced to issue substantial new debt to continue its global operations. From 2013 onward, Abengoa entered into or issued syndicated, bilateral, and other debt instruments totaling over $5 billion.

C. Abengoa's Financial Position and the Gonvarri Investment Agreement

During 2015, various factors, such as an insufficient upswing in the market in which the Abengoa Group operates and the difficulty of obtaining financing, precluded compliance with the Company's business plan. On July 31 2015, during Abengoa's results presentation for the first six months of 2015, Abengoa lowered its guidance for 2015 corporate free cash flow, which deepened existing market concerns regarding Abengoa's liquidity position, as well as raised concerns with its business partners and other shareholders regarding liquidity. These concerns adversely affected Abengoa's cash position, had a disruptive effect on its operations, contributed to a 27% decline in engineering and construction revenues in the third quarter of 2015 compared to the same period in the prior year, and caused the trading prices of Abengoa's Class A and Class B shares and outstanding bonds to fluctuate significantly during the third quarter and the beginning of the fourth quarter of the 2015 fiscal year.

In light of these developments, on September 24, 2015, as part of its comprehensive action plan aimed at improving its liquidity position and strengthening its corporate governance, Abengoa sought an equity raise to be underwritten by various financial institutions, which Abengoa was unable to secure. Further, Abengoa sought to secure an investment from Gonvarri Corporacion Financiera, S.L. ("***Gonvarri***"), a Gonvarri Steel Industries group company, and Waddell & Reed Investment Management, one of the main shareholders of Abengoa. Unfortunately, the Company was unable to consummate the Gonvarri transaction.

As no other proposal was received from any other potential subscriber that would immediately replace Gonvarri, the Company decided to initiate a refinancing process to try and reach an agreement with its main financial creditors, aimed to establish the framework to carry out such negotiations and provide the Abengoa Group with financial stability in the short and medium term. After a careful assessment of the situation and in order to provide the stability needed to carry out such negotiations with creditors, Abengoa's Board of Directors further announced on November 25, 2015, that it would continue negotiations with its creditors with the objective of reaching an agreement that ensures the Company's financial viability, under the protection of article 5 bis of the *Ley 22/2003 de 9 de julio, Concursal* (the "***Spanish Insolvency Law***"), a pre-insolvency statute that permits a company to enter into negotiations with certain creditors for restructuring its financial affairs.

D. The Spanish Proceedings

On November 25, 2015, December 3, 15, and 28, 2015, January 27, 2016, and February 1, 2016, Abengoa and certain of its affiliates (collectively, the "***5 bis Companies***") filed notice with the Mercantile Court of Seville, Spain (the "***Spanish Court***") that they had commenced negotiations with their principal creditors in order to reach a global agreement on the refinancing and restructuring of their liabilities to achieve the viability of the Abengoa Group in the short and long term. The Spanish Court issued orders on December 14 and 22, 2015, and January 15, 2016, admitting the notices and granting the 5 bis Companies with the protection under the Spanish Insolvency Law.

The Abengoa Group commenced negotiations with a large and diverse number of its main financial creditors, including a group of lenders that formed a coordinating committee, advised by Sullivan & Cromwell LLP, Uria Menendez Abogados, S.L.P.-C., and KPMG LLP, and an ad hoc committee of bondholders, advised by Clifford Chance LLP and Houlihan Lokey, Inc. The Abengoa Group, advised by Linklaters LLP, DLA Piper LLP (US), Alvarez & Marsal, Lazard Frères & Co., LLC and Madrid-based law firm Cortés, Abogados ("***Cortés***"), engaged with the coordinating committee and the ad hoc committee of bondholders regarding a restructuring, which led to Abengoa, S.A. and certain Delaware Debtors entering into a Standstill Agreement[1] and a Master Restructuring Agreement. Abengoa began preparing a business viability plan and the terms of a possible restructuring.

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1 In order to provide the Abengoa Group with sufficient time to solicit and obtain the requisite creditor support for its financial restructuring plan, several Abengoa Group companies asked their financial creditors to adhere to a standstill agreement (the "Standstill Agreement") under which those financial creditors would stay

Alvarez & Marsal prepared a viability plan (the "***Viability Plan***") based on a preliminary review of specific projects, the existing project pipelines, and the most recent information and thinking with respect to asset disposals and financial debt. As part of this evaluation, Alvarez & Marsal evaluated (i) 200 projects, each above €2.5 million that covered 90% of the Abengoa Group's €8.6 billion backlog as of December 31, 2015, and (ii) each business line by region and operating division with the head of each business line.

On December 30, 2015 and January 25, 2016, Alvarez & Marsal presented the Board of Directors of the Abengoa Group with the Viability Plan that defined the structure of the future activity of the Abengoa Group. This Viability Plan was presented to the public in a conference call held on Wednesday, February 17, 2016. In broad general terms, this Viability Plan analyzed the old Abengoa Group, proposed a new business model for a new Abengoa Group, presented both valuation and cash flows, risks and opportunities, and set forth certain recommendations and conclusions as to the viability of the proposed new Abengoa Group. This plan did not contain a financial restructuring proposal, but was an operational plan.

With respect to the Debtor, generally, and the Hugoton Plant, specifically, the Viability Plan contemplated that Abengoa's second-generation bioenergy business would be sold or restructured as a stand-alone business.

IV. MATERIAL EVENTS OF THE CHAPTER 11 CASE

A. Involuntary Petition, Request to Transfer Venue, and Appeals Processes.

On March 23, 2016, three creditors (the "***Petitioning Creditors***") asserting then-disputed state law lien claims against the Debtor filed an involuntary petition in the Bankruptcy Court under chapter 7 of the Bankruptcy Code.

On April 25, 2016, the Bankruptcy Court entered an order [Docket No. 69] denying the Debtor's motion to transfer venue of the Chapter 11 Case to the United States Bankruptcy Court for the District of Delaware, where several of the Debtor's affiliates' chapter 11 cases are being administered.

On May 2, 2016, the Debtor filed a motion for leave to appeal the denial of transfer of venue directly to the United States Court of Appeal for the 10th Circuit [Docket No. 78] (the "***Motion for Leave***"), a motion to stay this Chapter 11 Case pending appeal [Docket No. 79] ("***Stay Motion***"), and a Notice of Appeal and Statement of Election [Docket No. 81] (the "***Appeal***"). On May 5, 2016, the Debtor filed an emergency motion with the United States Bankruptcy Appellate Panel for the Tenth Circuit (the "***10th Circuit BAP***") to stay this Chapter 11 Case pending decision of the Bankruptcy Court regarding staying the case [10th Cir. BAP Docket No. 4]. On May 6, 2016, the Bankruptcy Court entered an order [Docket No. 97] denying the Stay Motion.

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certain rights and actions vis-à-vis the relevant Abengoa Group companies during a period of seven months from the date of the Standstill Agreement.

On May 8, 2016, the Debtor filed a supplement [10th Cir. BAP Docket No. 13] to its emergency motion to stay this case pending appeal with the 10th Circuit BAP. On May 16, 2016, the 10th Circuit BAP denied the Debtor's emergency motion for stay of the Chapter 11 Case pending appeal. See In re Abengoa Bioenergy Biomass of Kansas, LLC, BAP Appeal No. KS-16-012 (10th Cir. BAP, May 16, 2016) (denying stay pending appeal) [10th Cir. BAP Docket No. 25]. On May 26, 2016 the Bankruptcy Court entered an order denying the Motion for Leave. On June 23, 2016, the 10th Circuit BAP entered an order dismissing the Appeal [Docket No. 214; 10th Cir. BAP Docket No. 38], which was agreed to by the Debtor and the appellees.

B. Conversion to Chapter 11 and Entry of Certain Orders.

On April 8, 2016, the Bankruptcy Court entered an order [Docket No. 33] converting the case to a case under chapter 11 of the Bankruptcy Code. The Debtor is a debtor in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. While substantially all of the Debtor's assets have been sold, the Debtor remains in possession of its remaining assets and continues to operate its business without interruption. As described in more detail herein, the Debtor has sold substantially all of its assets to a third-party purchaser.

During the course of the Chapter 11 Case, the Bankruptcy Court entered orders that, among other things, permitted the Debtor to make certain payments to employees and continue an expense reimbursement policy [Docket No. 291], and authorized the Debtor to pay certain pre-conversion and post-conversion insurance-related obligations [Docket No. 354]; and

C. Schedules and Statements.

On May 20, 2016, the Debtor filed its Schedules and Statement of Financial Affairs.

D. Retention and Employment of the Debtor's Bankruptcy Professionals.

During the Chapter 11 Case, the Bankruptcy Court approved the Debtor's retention and employment of the following Professionals to assist in the administration of the Debtor's Chapter 11 Case: (i) DLA Piper LLP (US), as bankruptcy counsel to the Debtor [Docket No. 260]; (ii) Armstrong Teasdale LLP, as local bankruptcy counsel to the Debtor [Docket No. 261]; (iii) Josh Barker, Esq. as special litigation counsel to the Debtor [Docket No. 579]; and (iv) Ocean Park Advisors, LLC, as investment banker [Docket No. 259].

E. DIP Financing.

In the ordinary course of its business, the Debtor required cash on hand to fund its working capital, liquidity needs and other routine payables. In addition, the Debtor required financing to fund its Chapter 11 Case and to explore restructuring alternatives, including a 363 sale of all of its assets. Accordingly, during the course of this Chapter 11 Case, the Debtor sought and obtained approval from the Bankruptcy Court to obtain post-petition financing in the principal aggregate amount of up to $3,690,000 (the "***DIP Financing***") from Reich Brothers Business Solutions, LLC or its designee (the "***DIP Lender***"). On June 24, 2016, the Bankruptcy Court entered a final order approving the DIP Financing (the "***DIP Order***") [Docket No. 217]. On the Closing Date of the sale of substantially all of its assets, and in advance of the Maturity

Date under the DIP Order, the Debtor satisfied in full all of its indebtedness and other obligations under the DIP Financing to the DIP Lender.

F. Appointment of Creditors' Committee.

On June 14, 2016, an Official Committee of Unsecured Creditors (the "***Creditors' Committee***") was appointed by the United States Trustee [Docket No. 177]. The Creditors' Committee comprises: (i) Stoppel Dirt Inc.; (ii) Equipment Pro, Inc.; and (iii) Western Reserve Water Systems. On August 8, 2016, the Bankruptcy Court approved the retention of Baker & Hostetler LLP as primary counsel to the Creditors' Committee [Docket No. 342] and Robert L. Baer [Docket No. 343] as local counsel to the Creditors' Committee. On September 14, 2016, the Bankruptcy Court approved the retention of MelCap Partners LLC as financial advisor to the Creditors' Committee [Docket No. 427].

G. Key Employee Retention Plan and Incentive Plan.

On August 25, 2016, the Bankruptcy Court approved the Debtor's key employee retention plan [Docket No. 395] (the "***KERP***"), permitting the Debtor to make certain bonus payments to three key, non-insider employees in order to retain them during the marketing and sale of the Hugoton Plant. The KERP provides that KERP payments would be made as follows: (i) 30% upon entry of the order approving the KERP, and (ii) 70% upon closing of a sale of the Hugoton Plant. To be eligible for each of the payments under the KERP, the employee was required to be an employee of the Debtor on the installment date(s) set forth above. There were three participants in the KERP, with payments totaling $85,486.

Moreover, on October 13, 2016, the Bankruptcy Court entered a stipulated order (the "***KEIP Order***") approving the Debtor's key employee incentive plan (as amended by the KEIP Order, the "***KEIP***") for three eligible insider and non-insider employees. The KEIP provides that KEIP payments would be made upon repayment in full of (i) DIP Financing (the "***Tier 1 Payment***"), and (ii) all allowed mechanic's liens (the "***Tier 2 Payment***"). To be eligible for the KEIP, the participant must (i) be an employee of the Debtor on the milestone dates set forth above, and (ii) execute, without revocation within any statutorily recognized revocation period, a general release of known and unknown claims existing as of the release date in favor of the Debtor and its affiliated persons and entities in a form satisfactory to the Debtor. The total aggregate Tier 1 Payments is $176,349 and the total aggregate Tier 2 Payments is $178,171.

The KEIP Order provides that the KEIP shall not be effective until such time as (i) each of the Debtor's affiliates with scheduled or timely filed claims against the Debtor shall have agreed in writing that its claims will be subordinated, and (ii) with respect to affiliates whose claims are scheduled or otherwise timely filed, the subordination of such claims is approved in the bankruptcy cases in which such affiliates are debtor entities, including: (A) Case No. 16-41161 in the Eastern District of Missouri, (B) Case No. 16-10754 in the District of Delaware, and (C) Case No. 16-10790 in the District of Delaware. To date, no payments under the KEIP have been made, but are expected to be made upon or following the satisfaction of the subordination conditions described above.

H. Exclusivity Extensions.

On October 1, 2016, the Bankruptcy Court entered an order [Docket No. 407] granting the Debtor's request, pursuant to section 1121(d) of the Bankruptcy Code, to extend the Debtor's exclusivity period to file a plan of reorganization and solicit acceptances thereof to December 6, 2016 and February 2, 2017, respectively (together, the "***Exclusivity Periods***"). On December 21, 2016, the Bankruptcy Court entered an order [Docket No. 641] further extending the Exclusivity Periods to March 6, 2017 and May 8, 2017, respectively. On March 7, 2017, the Bankruptcy Court entered an order [Docket No. 762] further extending the Exclusivity Periods to April 20, 2017 and June 22, 2017, respectively.

I. Sale of Substantially All of the Debtor's Assets.

In an exercise of due diligence and following extensive consultation with its advisors, the Debtor determined that maximizing the value of its estate would be best accomplished through a sale, free and clear of liabilities, of the Debtor's assets. On July 12, 2016, the Bankruptcy Court approved the Debtor's engagement of Ocean Park Advisors, LLC ("***OPA***"), *nunc pro tunc* to April 19, 2016, as the Debtor's investment banker to assist in the marketing and sale of its assets [Docket No. 259].

The Debtor, OPA, and the Debtor's other professionals undertook extensive marketing efforts to identify potential purchasers of substantially all of the Debtor's assets, the centerpiece of which was the Hugoton Plant. Specifically, OPA began marketing the Hugoton Plant during the week of June 20, 2016 and contacted a wide range of strategic and financial investors in connection with the potential sale. In total, OPA contacted 212 potential buyers and 28 intermediaries, of which 60 executed (comprising 48 distinct parties) a non-disclosure agreement with the Debtor to gain access to confidential and supplemental diligence information in a virtual data room. In addition, OPA arranged 24 total site visits (from 18 distinct parties) to the Hugoton Plant.

Subsequently, the Debtor received eight non-binding letters of intent. In consultation with OPA and the Debtor's other professionals, the Debtor analyzed and considered the various bid packages. The Debtor ultimately entered into a stalking horse purchase agreement, dated October 12, 2016, with Shell Oil Company ("***Shell***"), for the purchase and sale of the Hugoton Plant for $26 million.

The *Debtor's Motion for Entry of an Order (I) (A) Approving and Authorizing Bidding Procedures in Connection with the Sale Substantially all of the Debtor's Assets, (B) Approving Stalking Horse Protections, (C) Approving Procedures Related to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (D) Approving the Form and Manner of Notice Thereof, and (II) (A) Authorizing the Sale of Substantially all of the Debtor's Assets Free and Clear of All Liens, (B) Approving The Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (C) Granting Related Relief* [Docket No. 467] (the "***Sale Motion***") set forth certain bidding procedures that would govern: (i) the bidding process for the sale of the Debtor's assets (the "***Sale***"), and (ii) procedures for the assumption and assignment of certain of the Debtor's executory contracts and unexpired leases. On October 14, 2016, the Bankruptcy Court entered an Order [Docket No. 481] (the "***Bid***

Procedures Order") approving, among other things, the bidding procedures requested in the Sale Motion.

Following entry of the Bid Procedures Order, OPA led an exhaustive re-marketing process ahead of the final bid deadline of November 18, 2016. The re-marketing process resulted in one additional qualified bid package from Synata Bio, Inc. ("***Synata***"). The Debtor invited Shell and Synata to attend an auction on November 21, 2016 at the offices of the Debtor's co-counsel, Armstrong Teasdale LLP in St. Louis, Missouri. At the close of the auction, Synata was determined to be the successful bidder of substantially all of the Debtor's assets (the "***Purchased Assets***") for a purchase price of $48.5 million, plus an agreement by Synata to use best efforts to enter into either (a) an agreement with the DOE pursuant to which the Debtor's rights and obligations related to the ABBK Award would be assumed and assigned to Synata, or (b) a novation of the ABBK Award.

On October 13, 2016, the DOE objected to the Debtor's bidding procedures motion [Docket No. 477], arguing that, pursuant to the ABBK Award, the Debtor was not entitled to sell the Ethanol Plant without accounting for "DOE's cost-share percentage with respect to property interests [of the DOE] in the [Ethanol Plant] and any proceeds from a Sale." *Id.*, ¶ 7. Further, on November 10, 2016, the DOE objected to the Sale [Docket No. 528] (the "***DOE Sale Objection***"), arguing that the Ethanol Plant could not be considered estate property due, in part, to "DOE's comprehensive control over its financial assistance awards[.]" *See* DOE Sale Objection, ¶ 6.

On November 19, 2016, the Debtor filed its response to the DOE Sale Objection [Docket No. 546] (the "***Debtor's Response***"), noting that the DOE had an investment interest in the Ethanol Plant, "much like any investor … has in an entrepreneur[]" but that the DOE did not "control" the Debtor in any meaningful way. *See* Debtor's Response, ¶ 15. As further described in Article II above, and for the reasons fully set forth in the Debtor's Response, the Debtor believes that the ABBK Award, unlike the fully repaid LGP Loan, may be characterized as an equity investment in the Debtor, given it was an investment made to further serve the goals and objectives of the United States government.

On November 29, 2016, the Bankruptcy Court entered an order approving the sale and successful bid of the Purchased Assets [Docket No. 578] (the "***Sale Order***"). The sale of the Purchased Assets closed on December 8, 2016 (the "***Closing***"). With respect to the DOE's claimed interest, the Sale Order provided for the DOE's reservation of rights to assert its alleged cost-share interest in the Ethanol Plant, but only against the proceeds of the Sale. *See* Sale Order, ¶ 29. Again, as noted above, the Debtor's Plan proposes to treat the DOE's asserted interests against the Debtor as Equity Interests.

J. Claims Process and Bar Dates.

Section 341 Meeting of Creditors. On June 9, 2016, the U.S. Trustee held the meeting of creditors in the Chapter 11 Case pursuant to section 341(a) of the bankruptcy code.

Bar Dates. Pursuant to the Bar Date Order [Docket No. 408], the Bankruptcy Court established (i) September 30, 2016, at 4:00 p.m. (CT) as the deadline for creditors (other than governmental units) to file proofs of claim in the Chapter 11 Case (the "***General Bar***

Date"); (ii) October 17, 2016, at 5:00 p.m. (CT) as the Initial Administrative Claims Bar Date; and (iii) October 5, 2016, at 4:00 p.m. (CT) as the Governmental Bar Date (collectively, the "***Bar Dates***"). Notice of the Bar Dates was served on all potential creditors of the Debtor's estate on September 3, 2016, and was published in the New York Times on September 8, 2016.

Prior to the Petition Date, ABBK and certain of its affiliates (as that term is defined in section 101(2) of the Bankruptcy Code, the "***Affiliates***"), engaged in certain intercompany transactions, including transactions related to the construction, start-up and commissioning of the Hugoton Plant. Certain of those Affiliates are chapter 11 debtors in those certain jointly administered cases in the United States Bankruptcy Court for the District of Delaware, *Abeinsa Holding Inc., et al.*, Case No. 16-10790, (the "***Delaware Cases***") and those certain jointly administered cases in the United States Bankruptcy Court Eastern District of Missouri, Eastern Division, *Abengoa Bioenergy US Holding, et al.*, Case No. 16-41161, (the "***Missouri Cases***" and, together with the Delaware cases, the "***Affiliate Cases***").

The Affiliates may hold prepetition claims against the Debtor (the *"**Intercompany Claims***"), and the Debtor, in turn, may hold certain claims against the Affiliates on a prepetition basis in the Affiliate Cases. The Debtor and each of the Affiliates, as the case may be, have filed agreed extensions in this Chapter 11 Case and in the Affiliate Cases, respectively, for the deadline by which the Affiliates and/or the Debtor must file intercompany proofs of claim against one another, while the parties attempt to negotiate a global agreement related thereto (the "***Intercompany Extensions***"). Specifically, in this Chapter 11 Case, on each of October 4, 2016 [Docket No. 456], November 1, 2016 [Docket No. 511], December 16, 2016 [Docket No. 624], January 27, 2017 [Docket No. 693], and March 15, 2017 [Docket No. 772], the Bankruptcy Court entered orders approving the Intercompany Extensions. The current deadline for filing Intercompany Claims is May 1, 2017. While no Intercompany Claims have been filed to date, to the extent such claims are asserted, the Debtor proposes to subordinate those claims to the General Unsecured Claims, as further described herein. In exchange for the subordination of the Intercompany Claims, the Debtor's Plan proposes to effectuate a release of any claims that the Debtor may have otherwise been able to assert against any of the Affiliates.

K. Lienholder Claims, Litigation and Settlements.

Prior to the General Bar Date, twenty-three (23) parties asserting state-law mechanic's liens, including the Petitioning Creditors (the "***Lienholders***"), filed secured proofs of claim against the Debtor in the aggregate total amount of $16,849,479.41 (the "***Lienholder Claims***"). Certain of these lienholders were parties to prepetition state-court litigation which was removed to the Bankruptcy Court as an adversary case on September 21, 2016 [Case No. 16-05151, Docket No. 2], and others filed adversary complaints against the Debtor in various adversary cases [Case Nos. 16-05090, 16-05104, 16-05116, 16-05117, 16-05118 and 16-05146] (collectively, the "***Adversary Litigation***").

Beginning after the Closing of the Sale, the Debtor and the Lienholders initiated settlement discussions with respect to the Lienholder Claims and the Adversary Litigation. On February 3, 2017, following extensive negotiations between the parties, the Debtor filed a motion to approve settlement agreements with 22 of the 23 Lienholders [Docket No. 700], and, on February 27, 2017, filed a supplemental motion to approve a settlement agreement with the final Lienholder [Docket No. 753] (together, the "***Settlement Motion***"). Pursuant to the Settlement

Motion, in exchange for the release of claims against the Debtor (and, in certain cases, its affiliates) and the dismissal of the Adversary Litigation, as applicable, the Debtor, with the support of the Creditors' Committee, made payments on account of the Lienholder Claims for less than 100% on the dollar to each of the Lienholders, resulting in a substantial savings and a source of additional recovery for unsecured creditors under the Plan. On February 14, 2017, the Bankruptcy Court entered an order approving the Settlement Motion with respect to the initial 22 of 23 Lienholders [Docket No. 715] and on April 6, 2017, the Bankruptcy Court entered a supplemental order approving the Settlement Motion with respect to the final Lienholder [Docket No. 786] (together, the "***Settlement Order***").

V. THE CHAPTER 11 PLAN

A. Treatment of Claims and Equity Interests Under the Plan.

THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE, CLASSIFICATION, TREATMENT AND IMPLEMENTATION OF THE PLAN, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, WHICH IS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT 1.

The Claims against the Debtor are divided into Classes according to their seniority and other criteria. The Classes of Claims for the Debtor and the funds and other property to be distributed under the Plan are described more fully below.

THE DEBTOR BELIEVES THAT THE PLAN AFFORDS CREDITORS THE POTENTIAL FOR THE GREATEST REALIZATION OF THE VALUE OF THE DEBTOR'S ASSETS.

1. Administrative Claims.

(a) **Administrative Claims**.

The Liquidating Trustee shall pay, from the Debtor's assets, each holder of an Allowed Administrative Claim, in satisfaction of such Allowed Administrative Claim, the full unpaid amount of such Allowed Administrative Claim in Cash: (1) on the Effective Date or as soon as practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as practicable thereafter); (2) if such Claim is Allowed after the Effective Date, on the date such Claim is Allowed or as soon as practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as practicable thereafter); (3) at such time and upon such terms as may be agreed upon by such holder and the Liquidating Trustee; or (4) at such time and upon such terms as set forth in an order of the Bankruptcy Court; provided, however, that Administrative Claims do not include Administrative Claims filed after the Administrative Claims Bar Date or Administrative Claims filed or asserted pursuant to section 503(b)(9) of the Bankruptcy Code after the General Bar Date, unless the Liquidating Trustee, in its discretion, chooses to treat such Claims as Administrative Claims.

(b) **Administrative Claims Bar Date**.

Except as otherwise provided, on or before the Final Administrative Claims Bar Date, any Person or Entity that seeks allowance of an Administrative Claim shall file with the Bankruptcy Court and serve on counsel for (i) the Debtor, (ii) the Creditors' Committee, and (iii) the Liquidating Trustee, any request for payment of an Administrative Claim arising after May 31, 2016. Requests for payment of an Administrative Claim must include at a minimum: (i) the name of the holder seeking allowance of an Administrative Claim; (ii) the amount of the Administrative Claim sought; (iii) the basis asserted for allowance of the Administrative Claim; and (iv) all supporting documentation that justify allowance of the Administrative Claim asserted.

The request for payment of an Administrative Claim will be considered timely filed only if it is filed with the Bankruptcy Court and actually received by parties identified in Article II.A of the Plan by the Final Administrative Claims Bar Date. Requests for payment of Administrative Claims may not be delivered by facsimile, telecopy, or electronic mail transmission.

(c) **Accrued Professional Compensation Claims**.

The deadline for submission by Professionals for Bankruptcy Court approval of Accrued Professional Compensation shall be sixty (60) days after the Effective Date. Any Professional or other Person or Entity that is required to file and serve a request for approval of Accrued Professional Compensation and fails to timely file and serve such request on or before such date shall be forever barred, estopped and enjoined from asserting such request or participating in Distributions under the Plan on account thereof. All Professionals employed by the Debtor or the Creditors' Committee, shall provide to the Debtor an estimate of their Accrued Professional Compensation through the Effective Date (including an estimate for fees and expenses expected to be incurred after the Effective Date to prepare and prosecute allowance of final fee applications) before the Effective Date.

(d) **Priority Tax Claims**.

The Liquidating Trustee shall pay, from the Debtor's assets, each holder of an Allowed Priority Tax Claim, in satisfaction of such Allowed Priority Tax Claim, the full unpaid amount of such Allowed Priority Tax Claim in Cash, on the later of (i) the Effective Date, (ii) the date such Allowed Priority Tax Claim becomes Allowed or as soon as practicable thereafter and (iii) the date such Allowed Priority Tax Claim is payable under applicable non-bankruptcy law; provided, however that the Liquidating Trustee shall not pay any premium, interest or penalty in connection with such Allowed Priority Tax Claim.

(e) **Other Priority Claims**.

The Liquidating Trustee shall pay, from the Debtor's assets, each holder of an Allowed Other Priority Claim, in satisfaction of such Allowed Other Priority Claim, the full unpaid amount of such Allowed Other Priority Claim in Cash, on the later of (i) the Effective Date or as soon as practicable thereafter, (ii) the date such Allowed Other Priority Claim

becomes Allowed or as soon as practicable thereafter and (iii) the date such Allowed Other Priority Claim is payable under applicable non-bankruptcy law.

2. Classification of Claims and Equity Interests.

(a) **Classified Claims Against and Equity Interests in the Debtor**.

Except as set forth in the Plan, all Claims against and Equity Interests in a particular Debtor are placed in a particular Class. The Debtor has not classified Administrative Expense Claims, Accrued Professional Compensation Claims, Priority Tax Claims, or Other Priority Claims.

The following table show the classification of Claims against and Equity Interests in the Debtor for all purposes, including voting, confirmation and Distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and deems a Claim classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date. Each Class set forth below is treated under the Plan as a distinct Class for voting and Distribution purposes.

Subject to all other applicable provisions of the Plan (including its Distribution provisions), classified Claims shall receive the treatment described in Article III of the Plan. The Plan will not provide any Distributions on account of a Claim to the extent that such Claim has been disallowed, released, withdrawn, waived, or otherwise satisfied or paid as of the Effective Date, including, without limitation, payments by third parties.

Class	Claims & Interest	Status	Treatment	Entitled to Vote	Estimated Recovery
1	Secured Claims	Unimpaired	Paid in Full	No (deemed to accept)	100%
2	General Unsecured Claims	Impaired	Pro Rata Share of Liquidating Trust Cash	Yes	95%
3	Intercompany Claims	Impaired	No Distribution	No (deemed to reject)	0%
4	Equity Interests	Impaired	No Distribution	No (deemed to reject)	0%

3. Treatment of Claims and Equity Interests.

(a) **Secured Claims (Class 1)**.

Except to the extent that a holder of an Allowed Secured Claim has been paid by the Debtor prior to the Effective Date or agrees to a less favorable classification and treatment, each holder of an Allowed Secured Claim shall receive, at the sole option of the Liquidating Trustee, Cash in the full amount of such Allowed Secured Claim or the collateral securing its Allowed Secured Claim, on or as soon as practicable after the latest to occur of (i) the Effective

Date; (ii) the first Business Day after the date that is ten (10) Business Days after the date such Claim becomes an Allowed Other Secured Claim; and (iii) the date or dates agreed to by the Liquidating Trustee and the holder of the Allowed Secured Claim.

(b) **General Unsecured Claims (Class 2)**.

Except to the extent that a holder of an Allowed General Unsecured Claim has been paid by the Debtor prior to the Effective Date or agrees to a less favorable classification and treatment, each holder of an Allowed General Unsecured Claim shall receive its Pro Rata share of remaining Cash. Distributions to holders of Allowed General Unsecured Claims shall be made as soon as practicable as the Liquidating Trustee may determine in its sole discretion.

(c) **Intercompany Claims (Class 3)**.

Holders of Intercompany Claims will receive no Distribution under the Plan.

(d) **Equity Interests (Class 4)**.

Holders of Equity Interests, including the DOE's interests with respect to the ABBK Award, will receive no Distribution under the Plan. All equity interests in the Debtor shall be deemed cancelled upon the Effective Date.

B. Means for Implementation of the Plan.

1. Establishment of Liquidating Trust.

On the Effective Date, the Liquidating Trustee shall sign the Liquidating Trust Agreement and, in his capacity as Liquidating Trustee, accept all Liquidating Trust Assets on behalf of the beneficiaries thereof, and be authorized to obtain, seek the turnover, liquidate, and collect all of the Liquidating Trust Assets not in his or her possession. The Liquidating Trust will then be deemed created and effective without any further action by the Bankruptcy Court or any Person as of the Effective Date. The Liquidating Trust shall be established for the purposes of (i) liquidating any non-Cash Liquidating Trust Assets; (ii) prosecuting and resolving the Causes of Action; (iii) maximizing recovery of the Liquidating Trust Assets for the benefit of the beneficiaries thereof; and (iv) distributing the proceeds of the Liquidating Trust Assets to the beneficiaries in accordance with the Plan and the Liquidating Trust Agreement, with no objective to continue or engage in the conduct of a trade or business, except only in the event and to the extent necessary for, and consistent with, the liquidating purpose of the Liquidating Trust.

2. Appointment of the Liquidating Trustee.

The Liquidating Trustee shall be appointed by the Creditors' Committee, in consultation with the Debtor, and pursuant to the Confirmation Order. Following appointment, the Liquidating Trustee shall have the same powers as the board of directors and officers of the Debtor, subject to the provisions of the Plan (and all bylaws, articles of incorporation and related corporate documents are deemed amended by the Plan to permit and authorize the same). In the event of resignation or removal, death or incapacity of the Liquidating Trustee, the Creditors' Committee shall designate another Person or Entity to serve as Liquidating Trustee and thereupon the successor Liquidating Trustee, without any further act or need for an order of the

Bankruptcy Court, shall become fully vested with all of the rights, powers, duties and obligations of the predecessor; provided, however, that the Liquidating Trustee shall be deemed removed on the date the Chapter 11 Case is closed, and no successor thereto shall be designated. The Liquidating Trustee shall be entitled to compensation payable from the Liquidating Trust Assets as set forth in the Liquidating Trust Agreement.

3. Beneficiaries of Liquidating Trust.

The holders of General Unsecured Claims against the Debtor entitled to Distributions shall be the beneficiaries of the Liquidating Trust. Such beneficiaries shall be bound by the Liquidating Trust Agreement. The interests of the beneficiaries in the Liquidating Trust shall be uncertificated and nontransferable except upon death of the interest holder or by operation of law.

4. Vesting and Transfer of Liquidating Trust Assets to the Liquidating Trust.

Pursuant to Bankruptcy Code section 1141(b), the Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all Liens, Claims and Interests, except as otherwise specifically provided in the Plan or in the Confirmation Order; provided, however, that the Liquidating Trustee may abandon or otherwise not accept any non-Cash Liquidating Trust Assets that the Liquidating Trustee believes, in good faith, have no value to the Liquidating Trust. Any non-Cash Liquidating Trust Assets that the Liquidating Trustee so abandons or otherwise does not accept shall not be property of the Liquidating Trust. The Liquidating Trust Assets include claims against third parties. These claims include, but are not limited to, preference, fraudulent transfer and other avoidance claims pursuant to chapter 5 of the Bankruptcy Code and state law counterparts. These claims will be preserved and transferred to the Liquidating Trust.

5. Liquidating Trust Expenses.

Subject to the provisions of the Liquidating Trust Agreement, all costs, expenses and obligations incurred by the Liquidating Trustee in administering the Plan, the Liquidating Trust, or in any manner connected, incidental or related thereto, in effecting distributions from, as applicable, the Liquidating Trust shall be a charge against the Liquidating Trust Assets remaining from time to time in the hands of the Liquidating Trustee. Such expenses shall be paid in accordance with the Liquidating Trust Agreement.

6. Role of the Liquidating Trustee.

The Liquidating Trustee shall be the exclusive trustee of the Liquidating Trust and the Liquidating Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3). The powers, rights, and responsibilities of the Liquidating Trustee shall be specified in the Liquidating Trust Agreement and shall include the authority and responsibility to: (a) receive, manage, invest, supervise, and protect the Liquidating Trust Assets; (b) pay taxes or other obligations incurred by the Liquidating Trust; (c) retain and compensate, without further order of the Bankruptcy Court, the services of employees, professionals and consultants to advise and assist in the reasonable administration, prosecution and distribution of Liquidating Trust Assets; (d) calculate and implement Distributions of Liquidating Trust Assets; (e) investigate, prosecute,

compromise, and settle, in accordance with the specific terms of the Liquidating Trust Agreement, Causes of Action vested in the Liquidating Trust; (f) resolve issues involving Claims and Interests in accordance with the Plan; (g) undertake all administrative functions of the Debtor's Chapter 11 Case, including the payment of fees payable to the United States Trustee and the ultimate closing of the Debtor's Chapter 11 Case. The Liquidating Trust is the successor to the Debtor and its Estate.

On the Effective Date, the Liquidating Trust shall: (a) take possession of all books, records, and files of the Debtor and its Estate; and (b) provide for the retention and storage of such books, records, and files until such time as the Liquidating Trust determines, in accordance with the Liquidating Trust Agreement, that retention of same is no longer necessary or required.

The Liquidating Trustee may invest Cash in the Liquidating Trust (including any earnings thereon or proceeds therefrom) in any manner permitted to be made by a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable Internal Revenue Service guidelines, rulings, or other controlling authorities.

The Liquidating Trust shall have the right to object to Claims not otherwise Allowed in connection with post-Effective Date Claims allowance process.

In no event later than thirty (30) Business Days after the end of the first full month following the Effective Date and on a quarterly basis thereafter until all Cash in the Liquidating Trust has been distributed in accordance with the Plan, the Liquidating Trustee shall file with the Bankruptcy Court a report setting forth the amounts, recipients and dates of all Distributions made by the Liquidating Trustee under the Plan through each applicable reporting period.

The Liquidating Trustee shall file tax returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with the Plan. The Liquidating Trust shall also annually (for tax years in which Distributions from the Liquidating Trust are made) send to each beneficiary a separate statement setting forth the beneficiary's share of items of income, gain, loss, deduction or credit, and all such holders shall report such items on their federal income tax returns; provided, however, that no such statement need be sent to any Class that is not expected to receive any Distribution from the Liquidating Trust. The Liquidating Trust's taxable income, gain, loss, deduction or credit will be allocated to the Liquidating Trust's beneficiaries in accordance with their relative beneficial interests in the Liquidating Trust. As soon as practicable after the Effective Date, the Liquidating Trust shall make a good faith valuation of assets of the Liquidating Trust, and such valuation shall be used consistently by all parties for all federal income tax purposes. The Liquidating Trust shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any Governmental Unit for taxing purposes. The Liquidating Trust may request an expedited determination of taxes of the Debtor or of the Liquidating Trust under Bankruptcy Code section 505(b) for all tax returns filed for, or on behalf of, the Debtor and the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust. The Liquidating Trust shall be responsible for filing all federal, state, and local tax returns for the Debtor and the Liquidating Trust. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all

distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements.

The Liquidating Trust shall be responsible for payments of all Allowed tax obligations of the Debtor, and any taxes imposed on the Liquidating Trust or the Liquidating Trust Assets.

7. Preservation of Right to Conduct Investigations.

The preservation for the Liquidating Trust of any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 is necessary and relevant to the liquidation and administration of the Liquidating Trust Assets. Accordingly, any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 held by the Debtor or the Creditors' Committee prior to the Effective Date shall vest with the Liquidating Trust and shall continue until dissolution of the Liquidating Trust.

8. Prosecution and Resolution of Causes of Action.

From and after the Effective Date, prosecution and settlement of all Causes of Action transferred to the Liquidating Trust shall be the sole responsibility of the Liquidating Trust pursuant to the Plan and the Confirmation Order. From and after the Effective Date, the Liquidating Trust shall have exclusive rights, powers, and interests of the Debtor's Estate to pursue, settle or abandon such Causes of Action as the sole representative of the Debtor's Estate pursuant to Bankruptcy Code section 1123(b)(3). Proceeds recovered from all Causes of Action will be deposited into the Liquidating Trust and will be distributed by the Liquidating Trustee to the beneficiaries in accordance with the provisions of the Plan and Liquidating Trust Agreement. All Causes of Action that are not expressly released or waived under the Plan are reserved and preserved and vest in the Liquidating Trust in accordance with the Plan. No Person may rely on the absence of a specific reference in the Plan, the Plan Supplement, or this Disclosure Statement to any Cause of Action as any indication that the Debtor or Liquidating Trustee will not pursue any and all available Causes of Action against such Person. The Liquidating Trustee expressly reserves all Causes of Action, except for any Causes of Action against any Person that are expressly released or waived under the Plan, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of confirmation or consummation of the Plan. No claims or Causes of Action against the Released Parties shall be transferred to the Liquidating Trust, the Liquidating Trustee shall not have standing to pursue such claims or Causes of Action, and all such claims and Causes of Action shall be waived, released and discharged pursuant to the Plan.

Settlement by the Liquidating Trust of any Cause of Action transferred to the Liquidating Trust shall require: (i) approval only of the Liquidating Trustee if the amount claimed by the Liquidating Trust against a defendant is less than five hundred thousand dollars ($500,000); and (ii) approval of the Liquidating Trustee and the Bankruptcy Court, upon notice and a hearing, if the amount claimed by the Liquidating Trust against a defendant is unliquidated or equals to or exceeds five hundred thousand dollars ($500,000).

9. Federal Income Tax Treatment of the Liquidating Trust for the Liquidating Trust Assets.

For federal income tax purposes, it is intended that the Liquidating Trust be classified as a liquidating trust under section 301.7701-4 of the Treasury regulations and that such trust be owned by its beneficiaries. Accordingly, for federal income tax purposes, it is intended that the beneficiaries be treated as if they had received a distribution from the Debtor's Estate of an undivided interest in each of the Liquidating Trust Assets (to the extent of the value of their respective share in the applicable assets) and then contributed such interests to the Liquidating Trust, and the Liquidating Trust's beneficiaries will be treated as the grantors and owners thereof.

10. Limitation of Liability.

No recourse will ever be had, directly or indirectly, against the Liquidating Trustee, its members, officers, directors, employees, professionals, representatives, agents, successors or assigns, by legal or equitable proceedings or by virtue of any statute or otherwise, or any deed of trust, mortgage, pledge or note, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Liquidating Trust under the Plan or by reason of the creation of any indebtedness by the Liquidating Trust or the Liquidating Trustee under the Plan. All such liabilities under the Plan will be enforceable only against, and will be satisfied only out of, the Liquidating Trust Assets. The Liquidating Trustee and its agents shall not be deemed to be the agent for any holder of a Claim in connection with Distributions made under the Plan. The Liquidating Trust and the Liquidating Trustee and their respective officers, directors, employees, professionals, representatives, agents, successors or assigns will not be liable for any act they may do, or omit to do, hereunder in good faith and in the exercise of their sound judgment; provided, however, that this section will not apply to any gross negligence or willful misconduct by the Liquidating Trust and the Liquidating Trustee or their respective officers, directors, employees, professionals, representatives, agents, successors or assigns.

11. Term of Liquidating Trust.

The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated at such time as (a) all Disputed Claims have been resolved, (b) all of the Liquidating Trust Assets have been liquidated, (c) all duties and obligations of the Liquidating Trustee under the Liquidating Trust Agreement have been fulfilled, (d) all Distributions required to be made by the Liquidating Trust under the Plan and the Liquidating Trust Agreement have been made, and (e) the Debtor's Chapter 11 Case has been closed; provided, however, that in no event shall the Liquidating Trust be dissolved later than three (3) years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the third anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension not to exceed one (1) year is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets.

12. Retention of Professionals by Liquidating Trust.

The Liquidating Trustee may retain and compensate attorneys and other professionals to assist in its duties on such terms (including on a contingency or hourly basis) as it deems reasonable and appropriate without Bankruptcy Court approval.

13. Conflicts Between the Liquidating Trust Agreement and the Plan.

In the event of any inconsistencies or conflict between the Liquidating Trust Agreement and the Plan, the terms and provisions of the Plan shall control.

14. Cancellation of Existing Securities and Agreements.

Except for purposes of evidencing a right to Distributions under the Plan or as otherwise provided hereunder, on the Effective Date, any and all agreements and other documents evidencing Claims or rights of any holder of a Claim or Equity Interest against the Debtor, including, but not limited to, all indentures, notes, bonds and share certificates evidencing such Claims and Equity Interests and any agreements or guarantees related thereto shall be cancelled, terminated, deemed null and void and satisfied, as against the Debtor but not as against any other Person.

15. Operations of the Debtor Between the Confirmation Date and the Effective Date.

The Debtor shall continue to operate as a debtor in possession during the period from the Confirmation Date through and until the Effective Date, and as a liquidating estate on and after the Effective Date. The retention and employment of the Professionals retained by the Debtor shall terminate as of the Effective Date, provided, however, that the Debtor shall be deemed to exist, and its Professionals shall be retained, after such date only with respect to (a) applications filed pursuant to sections 330 and 331 of the Bankruptcy Code, (b) motions seeking the enforcement of the provisions of the Plan or the Confirmation Order, and (c) such other matters as may be determined by the Debtor and the Liquidating Trustee, including, without limitation, the filing and prosecuting of objections to Claims solely with respect to Administrative Claims, Priority Tax Claims, and Other Priority Claims. On the Effective Date, the Debtor's directors and officers shall be terminated automatically without the need for any corporate action or approval and without the need for any corporate filings, and shall have no continuing obligations to the Debtor following the occurrence of the Effective Date.

16. Automatic Stay.

The automatic stay provided for under section 362 of the Bankruptcy Code shall remain in effect in the Chapter 11 Case until the Effective Date.

17. The Creditors' Committee.

Upon the Effective Date, the Creditors' Committee shall dissolve, and its members shall be released and discharged from all further authority, duties, responsibilities and obligations relating to and arising from the Chapter 11 Case. The retention and employment of the Professionals retained by the Creditors' Committee shall terminate as of the Effective Date,

provided, however, that the Creditors' Committee shall exist, and its Professionals shall be retained, after such date with respect to applications filed pursuant to sections 330 and 331 of the Bankruptcy Code and motions seeking the enforcement of the provisions of the Plan or the Confirmation Order, including, to the extent necessary, to appoint a successor Liquidating Trustee.

18. Books and Records.

As part of the appointment of the Liquidating Trustee, to the extent not already transferred on the Effective Date, the Debtor shall transfer dominion and control over all of its Books and Records to the Liquidating Trustee in whatever form, manner or media those Books and Records existed immediately prior to the transfer thereof to the Liquidating Trustee. The Liquidating Trustee may abandon all such Books and Records on or after ninety (90) days from the Effective Date, provided, however, that the Liquidating Trustee shall not dispose or abandon any Books and Records that are reasonably likely to pertain to pending litigation in which the Debtor or its current or former officers or directors are a party, or that pertain to General Unsecured Claims, without further order of the Bankruptcy Court. Pursuant to section 554 of the Bankruptcy Code, Article IV.R of the Plan shall constitute a motion and notice, so that no further notice or Bankruptcy Court filings are required to effectuate the aforementioned abandonment of the Books and Records of the Debtor.

19. D&O Insurance Policies.

No prepaid D&O Insurance Policy shall be cancelled, and the Debtor's directors, officers and employees who have valid claims against the D&O Insurance Policies for indemnification, defense, reimbursement, or limitation of liability may be paid from the D&O Insurance Policies to the extent of the coverage provided by the D&O Insurance Policies, if any. As such, and notwithstanding anything in the Plan to the contrary, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, the D&O Insurance Policies, to the extent the contract(s) providing for such is determined to be an executory contract, shall be deemed assumed by the Debtor.

C. Provisions Governing Voting And Distributions.

1. Voting of Claims.

Each holder of an Allowed Claim in an Impaired Class of Claims that is entitled to vote on the Plan pursuant to Article III of the Plan shall be entitled to vote separately to accept or reject the Plan, as provided in such order as is entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other order or orders of the Bankruptcy Court. For purposes of calculating the number of Allowed Claims in a Class of Claims that have voted to accept or reject the Plan under section 1126(c) of the Bankruptcy Code, all Allowed Claims in such Class held by one Entity or any Affiliate thereof shall be aggregated and treated as one Allowed Claim in such Class. For purposes of any Claim in any Impaired Class that is Disputed as to its amount only, the holder of such Claim shall be entitled to vote on the Plan as if such holder held an Allowed Claim in an amount equal to the undisputed portion of such Claim.

2. Distribution Dates.

Distributions to holders of Claims shall be made as provided in Articles II and III of the Plan. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

3. Disbursing Agent.

All Distributions under the Plan by the Liquidating Trustee shall be made by the Liquidating Trustee, or such other entity designated by the Liquidating Trustee, as disbursing agent (the "***Disbursing Agent***").

The Disbursing Agent shall be empowered to (a) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (b) make all Distributions contemplated by the Plan, (c) employ professionals to represent it with respect to its responsibilities, and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

The Disbursing Agent shall only be required to act and make Distributions in accordance with the terms of the Plan and shall have no (x) liability for actions taken in accordance with the Plan or in reliance upon information provided to them in accordance with the Plan or (y) obligation or liability for Distributions under the Plan to any party who does not hold an Allowed Claim at the time of Distribution or who does not otherwise comply with the terms of the Plan.

Except as otherwise ordered by the Bankruptcy Court, any reasonable fees and expenses incurred by the Liquidating Trustee acting as the Disbursing Agent (including, without limitation, reasonable attorneys' fees and expenses) on or after the Effective Date shall be paid in Cash from the Liquidating Trust Assets.

4. Record Date for Distributions.

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Record Date will be treated as the holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the Record Date. The Liquidating Trustee shall have no obligation to recognize any transfer of any Claim occurring after the Record Date. In making any Distribution with respect to any Claim, the Liquidating Trustee shall be entitled instead to recognize and deal with, for all purposes hereunder, only the Entity that is listed on the proof of Claim filed with respect thereto or on the Schedules as the holder thereof as of the close of business on the Record Date and upon such other evidence or record of transfer or assignment that was known to the Debtor as of the Record Date and is available to the Liquidating Trustee.

5. Delivery of Distributions.

Subject to Bankruptcy Rule 9010 and except as otherwise provided in the Plan, Distributions to the holders of Allowed Claims shall be made by the Disbursing Agent at (a) the address of each holder as set forth in the Schedules, unless superseded by the address set forth on proofs of Claim filed by such holder or (b) the last known address of such holder if no proof of Claim is filed or if the Liquidating Trustee has not been notified in writing of a change of address.

6. Undeliverable and Unclaimed Distributions.

In the event that any Distribution to any holder of an Allowed Claim made by the Liquidating Trustee is returned as undeliverable, the Disbursing Agent shall use commercially reasonable efforts to determine the current address of each holder, but no Distribution to such holder shall be made unless and until the Disbursing Agent has determined the then current address of such holder; provided, however, that all Distributions to holders of Allowed Claims made by the Liquidating Trustee that are unclaimed for a period of ninety (90) days after the date of the first attempted Distribution shall have its, his or her Claim for such undeliverable Distribution deemed satisfied and will be forever barred from asserting any such Claim against the Debtor or its property. Any Distributions which are undeliverable or have not been negotiated within the time period set forth above shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and revested in the Debtor's Estate. The Liquidating Trustee shall have no further obligation to make any Distribution to the holder of such Claim on account of such Claim, and any entitlement of any holder of such Claim to any such Distributions shall be extinguished and forever barred; provided, however, that the holder of such Claim may receive future Distributions on account of such Claim by contacting the Liquidating Trustee at some point prior to the final Distribution.

7. Manner of Cash Payments Under the Plan.

Except as otherwise provided in the Plan, Cash payments made pursuant to the Plan shall be in United States dollars by checks drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Liquidating Trustee.

8. Compliance with Tax Requirements.

The Disbursing Agent may withhold and pay to the appropriate taxing authority all amounts required to be withheld pursuant to the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or Distribution on account of Claims. All such amounts withheld and paid to the appropriate taxing authority shall be treated as amounts distributed to such holders of the Claims. The Disbursing Agent shall be authorized to collect such tax information from the holders of Claims (including social security numbers or other tax identification numbers) as it in its sole discretion deems necessary to effectuate the Plan. In order to receive Distributions under the Plan, all holders of Claims will need to identify themselves to the Disbursing Agent and provide all tax information the Disbursing Agent deems appropriate (including completing the appropriate Form W-8 or Form W-9, as applicable to each holder). The Disbursing Agent may refuse to make a Distribution to any holder of a Claim that fails to furnish such information within the time period specified by the Disbursing Agent and

such Distribution shall be deemed an unclaimed Distribution under the Plan, and, provided further that, if the Disbursing Agent fails to withhold in respect of amounts received or distributable with respect to any such holder and such Disbursing Agent is later held liable for the amount of such withholding, such holder shall reimburse the Disbursing Agent for such liability. Notwithstanding any other provision of the Plan, (a) each holder of an Allowed Claim that is to receive a Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, and (b) no Distributions shall be required to be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Disbursing Agent for the payment and satisfaction of such tax obligations or has, to the Disbursing Agent's satisfaction, established an exemption therefrom.

9. No Payments of Fractional Dollars.

Notwithstanding any other provision of the Plan to the contrary, no payment of fractional dollars shall be made pursuant to the Plan. Whenever any payment of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding down of such fraction to the nearest whole dollar.

10. Interest on Claims.

Except to the extent provided in section 506(b) of the Bankruptcy Code, the Plan, or the Confirmation Order, post-petition interest shall not accrue or be paid on Claims, and no holder of an Allowed Claim shall be entitled to interest accruing on any Claim from and after the Petition Date.

11. No Distribution in Excess of Allowed Amount of Claim.

Notwithstanding anything to the contrary contained in the Plan, no holder of an Allowed Claim shall receive in respect of that Claim any Distribution in excess of the Allowed amount of such Claim.

12. Setoff and Recoupment.

The Liquidating Trustee may setoff against, or recoup from, any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any Claims or defenses of any nature whatsoever that the Debtor or the Estate may have against the holder of such Claim, 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, the Estate or the Liquidating Trustee of any right of setoff or recoupment that any of them may have against the holder of any Claim. Any such setoffs or recoupments may be challenged in Bankruptcy Court. Notwithstanding any provision in the Plan to the contrary, nothing in the Plan shall bar any creditor from asserting its setoff or recoupment rights to the extent permitted under section 553 or any other provision of the Bankruptcy Code provided that such setoff or recoupment rights are timely asserted; provided further that all rights of the Debtor, its Estate and the Liquidating Trustee with respect thereto are reserved.

13. De Minimis Distributions; Charitable Donation.

Notwithstanding anything to the contrary in the Plan, the Liquidating Trustee shall not be required to make a Distribution to any Creditor if the dollar amount of the Distribution is less than $25 or otherwise so small that the cost of making that Distribution exceeds the dollar amount of such Distribution. On or about the time that the final Distribution is made, the Liquidating Trustee may make a charitable donation with undistributed funds if, in the reasonable judgment of the Liquidating Trustee, the cost of calculating and making the final Distribution of the remaining funds is excessive in relation to the benefits to the or holders of Claims who would otherwise be entitled to such Distributions, and such charitable donation is provided to an entity not otherwise related to the Debtor or the Liquidating Trustee.

14. United States Trustee Fees.

All fees due and payable pursuant to section 1930 of Title 28 of the U.S. Code prior to the Effective Date shall be paid by the Debtor. On and after the Effective Date, the Liquidating Trustee shall pay any and all such fees payable by the Debtor, when due and payable, and shall file with the Bankruptcy Court quarterly reports for the Debtor, in a form reasonably acceptable to the U.S. Trustee. The Debtor shall remain obligated to pay quarterly fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.

15. Withholding from Distributions.

Any federal, state or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from Distributions pursuant to the Plan. The Liquidating Trustee may withhold from amounts distributable pursuant to the Plan to any Person or Entity any and all amounts, determined in the sole and reasonable discretion of the Liquidating Trustee, required to be withheld by any law, regulation, rule, ruling, directive, or other governmental requirement.

16. No Distributions on Late-Filed Claims.

Except as otherwise provided in a Final Order of the Bankruptcy Court, any Claim as to which a proof of Claim was required to be filed and was first filed after the applicable bar date in the Chapter 11 Case, including, without limitation, the General Bar Date and any bar date established in the Plan or in the Confirmation Order, shall automatically be deemed a late-filed Claim that is disallowed in the Chapter 11 Case, without the need for (a) any further action by the Liquidating Trustee or (b) an order of the Bankruptcy Court. Nothing in this paragraph is intended to expand or modify the applicable bar dates or any orders of the Bankruptcy Court relating thereto.

D. Disputed Claims.

1. Disputed Claims Reserve.

After the Effective Date, the Disputed Claims Reserve shall be managed by the Liquidating Trustee for the treatment of Disputed Claims. On each Distribution date after the

Effective Date in which the Liquidating Trustee makes Distributions to holders of Allowed Claims, the Liquidating Trustee shall retain on account of Disputed Claims an amount the Liquidating Trustee estimates is necessary to fund the Pro Rata Share of such Distributions to holders of Disputed Claims if such Claims were Allowed, with any Disputed Claims that are unliquidated or contingent being reserved in an amount reasonably determined by the Liquidating Trustee. Cash retained on account of such Disputed Claims shall be retained in the Disputed Claims Reserve for the benefit of the holders of Disputed Claims pending a determination of their entitlement thereto under the terms of the Plan. If any Disputed Claim is disallowed or Allowed in an amount that is lower than the aggregate assets retained on account of such Disputed Claim, then the Liquidating Trustee shall, within fifteen (15) days after such disallowance or allowance, return the assets that exceed the Allowed amount of such Claim to the Debtor's Estate.

2. Resolution of Disputed Claims.

The Liquidating Trustee shall have the right to make and file objections to Claims in the Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, all Disputed Claims shall be subject to the exclusive jurisdiction of the Bankruptcy Court.

3. Objection Deadline.

All objections to Disputed Claims shall be filed no later than the Claims Objection Bar Date, unless otherwise ordered by the Bankruptcy Court after notice and a hearing, with notice only to those parties entitled to notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002.

4. Estimation of Claims.

At any time, the Liquidating Trustee may request that the Bankruptcy Court estimate any contingent or unliquidated Claim to the extent permitted by section 502(c) of the Bankruptcy Code regardless of whether the Liquidating Trustee or the Debtor have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall have jurisdiction to estimate any Claim at any time during litigation concerning any objection to such Claim, including during the pendency of any appeal relating to any such objection. If the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on the Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the Claim, the Liquidating Trustee may elect to pursue supplemental proceedings to object to the ultimate allowance of the Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

5. No Distributions Pending Allowance.

Notwithstanding any other provision in the Plan, if any portion of a Claim is disputed, no payment or Distribution provided under the Plan shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, Distributions (if any) shall be made to the holder of such Allowed Claim in accordance with the provisions of the Plan. Upon allowance, a holder of the Allowed Disputed Claim shall receive any Distributions that would have been made up to the date of allowance to such holder under the Plan had the Disputed Claim been allowed on the Effective Date.

6. Resolution of Claims.

On and after the Effective Date, the Liquidating Trustee shall have the authority to compromise, settle, otherwise resolve or withdraw any objections to Claims, and to compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court.

E. Treatment of Executory Contracts and Unexpired Leases.

1. Assumption or Rejection of Executory Contracts and Unexpired Leases.

In accordance with sections 365(a) and 1123(b)(2) of the Bankruptcy Code, all executory contracts and unexpired leases that exist between the Debtor and any Person or Entity shall be deemed rejected by the Debtor as of immediately prior to the Confirmation Date, except for any executory contract or unexpired lease (i) that has been assumed or rejected by an order of the Bankruptcy Court entered prior to the Effective Date or (ii) as to which a motion for approval of the assumption of such executory contract or unexpired lease has been filed and served prior to the Effective Date. Subject to the occurrence of the Effective Date, entry of the Confirmation Order shall constitute approval of rejection under section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that each such rejection is in the best interests of the Debtor, its Estate, and all parties in interest in the Chapter 11 Case.

2. Claims Based on Rejection of Executory Contracts and Unexpired Leases.

Claims created by the rejection of executory contracts and unexpired leases pursuant to Article VII.A of the Plan must be filed with the Bankruptcy Court and served on the Debtor and the Liquidating Trustee no later than thirty (30) days after service of notice of the Effective Date. Any Claims arising from the rejection of an executory contract or unexpired lease pursuant to Article VII.A of the Plan for which proofs of Claim are not timely filed within that time period will be forever barred from assertion against the Debtor, its Estate, the Liquidating Trustee, their respective successors and assigns, and their respective assets and properties, unless otherwise ordered by the Bankruptcy Court or as otherwise provided in the Plan. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article IX.E of the Plan. Unless otherwise ordered by the Bankruptcy Court, all such

Claims that are timely filed as provided in the Plan shall be treated as General Unsecured Claims under the Plan and shall be subject to the provisions of Article III of the Plan.

3. Indemnification and Reimbursement.

Subject to the occurrence of the Effective Date, all Allowed Claims against the Debtor for indemnification, defense, reimbursement, or limitation of liability of current or former directors, officers, or employees of the Debtor against any Claims, costs, liabilities or causes of action as provided in the Debtor's articles of organization, bylaws, other organizational documents, or applicable law, shall, to the extent such indemnification, defense, reimbursement, or limitation is owed in connection with one or more events or omissions occurring before the Petition Date, be (a) paid only to the extent of any applicable insurance coverage, and (b) to the extent a proof of Claim has been timely filed and is Allowed, treated as Allowed General Unsecured Claims to the extent such Claims are not covered by any applicable insurance, including deductibles. Nothing contained in the Plan shall affect the rights of directors, officers or employees under any insurance policy or coverage with respect to such Claims, costs, liabilities or Causes of Action or limit the rights of the Debtor, the Liquidating Trustee or the Debtor's Estate to object to, seek to subordinate or otherwise contest or challenge Claims or rights asserted by any current or former officer, director or employee of the Debtor.

F. Conditions Precedent to the Effective Date.

1. Conditions Precedent.

The following are conditions precedent to the Effective Date that must be satisfied or waived:

(a) The Bankruptcy Court shall have entered the Confirmation Order.

(b) There shall be no stay or injunction in effect with respect to the Confirmation Order, which such Confirmation Order shall contain approval of the releases provided for in the Plan.

(c) The appointment of the Liquidating Trustee shall have been confirmed by order of the Bankruptcy Court.

(d) All agreements and instruments that are exhibits to the Plan shall be in a form reasonably acceptable to the Debtor and the Creditors' Committee, and have been duly executed and delivered; provided, however, that no party to any such agreements and instruments may unreasonably withhold its execution and delivery of such documents to prevent this condition precedent from occurring.

2. Waiver.

Notwithstanding the foregoing conditions in Article VIII.A of the Plan, the Debtor reserves, in its sole discretion, the right to waive the occurrence of or modify any of the foregoing conditions precedent. Any such written waiver of a condition precedent set forth in Article VIII.B of the Plan may be effected at any time, without notice, without leave or order of the Bankruptcy Court, and without any formal action other than proceeding to consummate the

Plan; provided, however, that the Creditors' Committee shall have the right to be consulted on and consent to any proposed modification of the Plan, the Plan Supplement or the Confirmation Order. Any actions required to be taken on the Effective Date or Confirmation Date (as applicable) shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action.

3. Notice of Effective Date.

The Debtor shall file with the Bankruptcy Court a notice of occurrence of the Effective Date within seven (7) days after the conditions in Article VIII of the Plan have been satisfied or waived pursuant to Article VIII.B of the Plan.

G. Indemnification, Release, Injunctive and Related Provisions.

1. Compromise and Settlement.

Pursuant to Bankruptcy Code section 363 and Bankruptcy Rule 9019, and in consideration for the Distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims and Equity Interests. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all Claims and Equity Interests, as well as a finding by the Bankruptcy Court that such compromise or settlement is fair, equitable, reasonable and in the best interests of the Debtor, the Estate and holders of Claims and Equity Interests.

2. Releases by the Debtor and its Estate.

Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, for the good and valuable consideration provided by each of the Released Parties, the Debtor and its Representatives and the Estate (collectively, the "*Debtor Releasing Parties*") shall be deemed to have provided a full, complete, unconditional, and irrevocable release to the Released Parties (and each such Released Party so released shall be deemed released by the Debtor and its Representatives, the Estate, and the Creditors' Committee and its members but solely in their capacity as members of the Creditors' Committee and not in their individual capacities), from any and all Causes of Action and any other debts, obligations, rights, suits, damages, actions, remedies and liabilities whatsoever, whether accrued or unaccrued, whether known or unknown, foreseen or unforeseen, existing before the Effective Date, as of the Effective Date or arising thereafter, in law, at equity, whether for tort, contract, violations of statutes (including but not limited to the federal or state securities laws), or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstance existing or taking place prior to or on the Effective Date, arising from or related in any way to the Debtor, including, without limitation, those that the Debtor would have been legally entitled to assert or that any holder of a Claim or Equity Interest or other Entity would have been legally entitled to assert for or on behalf of the Debtor or the Estate, including those in any way related to the Chapter 11 Case or the Plan; provided that the foregoing release shall not prohibit the Liquidating Trustee from asserting any and all defenses and counterclaims in respect of any Disputed Claim asserted by any of the Released Parties; and provided further that the releases granted to the Affiliates under Article IX.B.1 of the Plan are expressly conditioned

upon the subordination of the Intercompany Claims to General Unsecured Claims for all purposes, including distributions. If the Intercompany Claims are not subordinated to General Unsecured Claims for all purposes, including distributions, then the releases granted to the Affiliates in Article IX.B.1 of the Plan shall be deemed null and void. Notwithstanding the above, the Releases by the Debtor Releasing Parties provided pursuant to Article IX.B of the Plan shall not affect any Causes of Action and any other debts, obligations, rights, suits, judgments, damages, actions, remedies and liabilities arising after the Effective Date and based on any act or omission, transaction, or other occurrence or circumstances taking place after the Effective Date; provided further that nothing set forth in the preceding proviso shall in any way limit the exculpation provisions set forth in IX.C of the Plan.

3. Releases by Holders of Claims.

Except as otherwise provided in Article XI.B of the Plan, each Person, other than the Debtor, who votes to accept the Plan and does not mark such ballot to indicate a refusal to grant the release provided for in this paragraph, shall be deemed to fully, completely, unconditionally, irrevocably, and forever release the Released Parties of and from any and all Claims and Causes of Action and any other debts, obligations, rights, suits, damages, actions, remedies and liabilities whatsoever, whether accrued or unaccrued, whether known or unknown, foreseen or unforeseen, existing before the Effective Date, as of the Effective Date or arising thereafter, in law, at equity, whether for tort, contract, violations of statutes (including but not limited to the federal or state securities laws), or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtor and its Representatives, whether direct, derivative, accrued or unaccrued, liquidated or unliquidated, fixed or contingent, matured or unmatured, Disputed or undisputed, known or unknown, foreseen or unforeseen, in law, equity or otherwise.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the releases set forth in Article IX.B.2 of the Plan under Bankruptcy Rule 9019 and its finding that they are: (a) in exchange for good and valuable consideration, representing a good faith settlement and compromise of the Claims and Causes of Action released by the Plan; (b) in the best interests of the Debtor and all holders of Claims and Equity Interests; (c) fair, equitable and reasonable; (d) approved after due notice and opportunity for hearing; and (e) a bar to the assertion of any Claim or Cause of Action thereby released.

4. Exculpation.

Notwithstanding anything contained in the Plan to the contrary, the Released Parties shall neither have nor incur any liability relating to the Chapter 11 Case to any Entity for any and all Claims and Causes of Action arising after the Petition Date and through the Effective Date, including any act taken or omitted to be taken in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming or consummating the Plan, the Disclosure Statement, or any other contract, instrument, release, other agreement or document created or entered into

in connection with the Plan, or any other post-petition act taken or omitted to be taken in connection with the Chapter 11 Case; provided, however, that the foregoing provisions of Article IX.C of the Plan shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct.

5. Preservation of All Causes of Action Not Expressly Settled or Released.

Unless a Cause of Action against a holder or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including the Confirmation Order) of the Bankruptcy Court, the Debtor and its Estate expressly reserve such Cause of Action for later adjudication or administration by the Liquidating Trustee (including, without limitation, Causes of Action not specifically identified or described in the Plan or elsewhere or of which the Debtor may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances which may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action upon or after the entry of the Confirmation Order or Effective Date based on the Disclosure Statement, Plan or Confirmation Order, except where such Causes of Action have been released in the Plan or any other Final Order (including the Confirmation Order). In addition, the Debtor and its Estate expressly reserve the right of the Liquidating Trustee to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

Subject to the immediately preceding paragraph, any Entity to whom the Debtor has incurred an obligation (whether on account of services, purchase or sale of goods or otherwise), or who has received services from the Debtor or a transfer of money or property of the Debtor, or who has transacted business with the Debtor, or leased equipment or property from the Debtor should assume that any such obligation, transfer, or transaction may be reviewed by the Liquidating Trustee subsequent to the Effective Date and may be the subject of an action after the Effective Date, regardless of whether: (a) such Entity has filed a proof of Claim against the Debtor in the Chapter 11 Case; (b) the Debtor has objected to any such Entity's proof of Claim; (c) any such Entity's Claim was included in the Schedules; (d) the Debtor has objected to any such Entity's scheduled Claim; or (e) any such Entity's scheduled Claim has been identified by the Debtor as disputed, contingent or unliquidated**.**

6. Injunction.

From and after the Effective Date, all Entities are permanently enjoined from commencing or continuing in any manner against the Debtor, the Estate, the Liquidating Trustee, the Creditors' Committee, and their successors and assigns, and their assets and properties, as the case may be, any suit, action or other proceeding, on account of or respecting any Claim or Equity Interest, demand, liability, obligation, debt, right, Cause of Action, interest or remedy released or satisfied or to be released or satisfied pursuant to the Plan or the Confirmation Order.

Except as otherwise expressly provided for in the Plan or in obligations issued pursuant to the Plan, from and after the Effective Date, all Entities shall be precluded from asserting against the Debtor, the Estate, the Liquidating Trustee, the Creditors' Committee, and their successors and assigns and their assets and properties, any other Claims or Equity Interests based upon any documents, instruments, or any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, solely to the extent that (a) such Claims or Equity Interests have been released or satisfied pursuant to the Plan or the Confirmation Order or (b) such Claims, Equity Interests, actions or assertions of Liens relate to property that will be distributed pursuant to the Plan or the Confirmation Order.

The rights afforded in the Plan and the treatment of all Claims and Equity Interests in the Plan shall be in exchange for and in complete satisfaction of Claims and Equity Interests against the Debtor or any of its assets or properties solely to the extent that (a) such Claims or Equity Interests have been released or satisfied pursuant to the Plan or the Confirmation Order or (b) such Claims, Equity Interests, actions or assertions of Liens relate to property that will be distributed pursuant to the Plan or the Confirmation Order. On the Effective Date, all such Claims against, and Equity Interests in, the Debtor shall be satisfied and released in full.

Except as otherwise expressly provided for in the Plan or in obligations issued pursuant to the Plan, all Persons and Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Equity Interest satisfied and released pursuant to the Plan or Confirmation Order, from:

(a) commencing or continuing in any manner any action or other proceeding of any kind against the Debtor, the Estate, the Liquidating Trustee, the Creditors' Committee, and their successors and assigns and their assets and properties;

(b) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the Debtor, the Estate, the Liquidating Trustee, the Creditors' Committee, and their successors and assigns and their assets and properties;

(c) creating, perfecting or enforcing any encumbrance of any kind against the Debtor, the Estate, the Liquidating Trustee, the Creditors' Committee, and their successors and assigns and their assets and properties; and

(d) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim or Equity Interest or Cause of Action released or settled under the Plan.

7. Releases of Liens.

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges or other security interests against property of the Estate distributed under the Plan shall be fully released and discharged and all of the right, title and interest of any

holder of such mortgages, deeds of trust, Liens, pledges or other security interest shall revert to the Debtor.

H. Retention of Jurisdiction.

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities, including, without limitation, the Liquidating Trustee, with respect to all matters related to the Chapter 11 Case, the Debtor and the Plan as is legally permissible, including, without limitation, jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest against the Debtor, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims;

2. grant, deny or otherwise resolve any and all applications of Professionals or Persons retained in the Chapter 11 Case by the Debtor or the Creditors' Committee for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;

3. resolve any matters related to the assumption, assignment or rejection of any executory contract or unexpired leases to which the Debtor is party or with respect to which the Debtor may be liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom;

4. ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan, including by resolving any disputes regarding the Debtor's entitlement to recover assets held by third parties;

5. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Liquidating Trustee after the Effective Date;

6. enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all other contracts, instruments, releases, indentures and other agreements or documents adopted in connection with the Plan or the Disclosure Statement;

7. resolve any cases, controversies, suits or disputes that may arise in connection with the Effective Date, interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

8. issue injunctions, enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the Effective Date or enforcement of the Plan, except as otherwise provided in the Plan;

9. enforce Article IX.A, Article IX.B, Article IX.C, Article IX.D and Article IX.E of the Plan;

10. resolve any cases, controversies, suits or disputes with respect to the releases, injunction and other provisions contained in Article IX of the Plan, and enter such orders as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

11. enter and implement such orders as necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

12. resolve any other matters that may arise in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture or other agreement or document adopted in connection with the Plan or the Disclosure Statement;

13. enter an order and a Final Decree closing the Chapter 11 Case.

I. Miscellaneous Provisions.

1. Modification of the Plan.

(a) **Preconfirmation Amendment**.

The Debtor may modify the Plan, subject to section 1127 of the Bankruptcy Code, at any time prior to the entry of the Confirmation Order provided that the Plan, as modified, and the Disclosure Statement pertaining thereto meet applicable Bankruptcy Code requirements.

(b) **Postconfirmation Amendment Not Requiring Resolicitation**.

After the entry of the Confirmation Order, the Debtor may modify the Plan, subject to section 1127 of the Bankruptcy Code, to remedy any defect or omission or to reconcile any inconsistencies in the Plan or in the Confirmation Order, as may be necessary to carry out the purposes and effects of the Plan; provided that the Debtor obtain approval of the Bankruptcy Court for such modification, after notice and a hearing. Any waiver under Section VIII.B. of the Plan shall not be considered to be a modification of the Plan.

2. Revocation or Withdrawal of the Plan.

The Debtor reserves the right to revoke or withdraw the Plan prior to the entry of the Confirmation Order, and to file subsequent chapter 11 plans. If the Debtor revokes or withdraws the Plan or if entry of the Confirmation Order or the Effective Date does not occur, then: (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of executory contracts effected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (c) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (ii) prejudice in any manner the rights of the Debtor or any other Entity; or (iii) constitute an admission of any sort by the Debtor or any other Entity.

3. Binding Effect.

On the Effective Date, the provisions of the Plan shall bind any holder of a Claim against, or Equity Interest in, the Debtor and such holder's respective successors and assigns, whether or not the Claim or Equity Interest of such holder is Impaired under the Plan, whether or not such holder has accepted the Plan and whether or not such holder is entitled to a Distribution under the Plan.

4. Successors and Assigns.

The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

5. Governing Law.

Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, unless otherwise stated, and subject to the provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection with the Plan, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware without giving effect to the principles of conflict of laws thereof.

6. Reservation of Rights.

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless and until the Effective Date occurs. Neither the filing of the Plan, any statement or provision contained in the Plan, nor the taking of any action by the Debtor or any Entity with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of: (a) the Debtor with respect to the holders of Claims or Equity Interests or other parties in interest; or (b) any holder of a Claim or other party in interest prior to the Effective Date.

7. Section 1146 Exemption.

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.

8. Section 1125(e) Good Faith Compliance.

Confirmation of the Plan shall act as a finding by the Bankruptcy Court that the Debtor and its Representatives have acted in "good faith" under section 1125(e) of the Bankruptcy Code.

9. Further Assurances.

The Debtor, the Liquidating Trustee, all holders of Claims receiving Distributions hereunder and all other parties in interest shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

10. Service of Documents.

Any pleading, notice or other document required by the Plan to be served on or delivered to the Debtor shall be sent by first class U.S. mail, postage prepaid as follows:

To the Debtor:

Abengoa Bioenergy of Biomass of Kansas, LLC
16150 Main Circle Drive, Suite 300
Chesterfield, Missouri 63017
Attention: General Counsel
E-mail address: jeffrey.bland@abengoa.com

with a copy to:

DLA Piper LLP (US)
1717 Main St., Suite 4600
Dallas, Texas 75201
Fax no.: (972) 813-6267
Attention: Vincent P. Slusher
David E. Avraham
E-mail address: vince.slusher@dlapiper.com
david.avraham@dlapiper.com

-and-

Armstrong Teasdale LLP
2345 Grand Blvd., Suite 1500
Kansas City, Missouri 64108
Attention: Christine L. Schlomann
Email address: cschlomann@armstrongteasdale.com

To the Liquidating Trustee:

[TBD]

11. Filing of Additional Documents.

On or before the Effective Date, the Debtor may file with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

12. No Stay of Confirmation Order.

The Debtor shall request that the Bankruptcy Court waive stay of enforcement of the Confirmation Order otherwise applicable, including pursuant to Federal Rules of Bankruptcy Procedure 3020(e), 6004(h) and 7062.

VI. RISK FACTORS IN CONNECTION WITH THE PLAN

The holders of Claims against the Debtor should read and carefully consider the following risk factors, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith), before deciding whether to vote to accept or reject the Plan. These risk factors should not, however, be regarded as constituting the only risks associated with the Plan and its implementation.

A. Bankruptcy Considerations.

Although the Debtor believes the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will confirm the Plan as proposed. Moreover, there can be no assurance that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate the re-solicitation of votes.

In addition, the occurrence of the Effective Date is conditioned on the satisfaction (or waiver) of the conditions precedent set forth in Article VIII.A of the Plan, and there can be no assurance that such conditions will be satisfied or waived. In the event the conditions precedent described in Article VIII.A of the Plan have not been satisfied, or waived (to the extent possible) by the Debtor or applicable parties (as provided for in the Plan) as of the Effective Date, then the Confirmation Order will be vacated, no Distributions will be made pursuant to the Plan, and the Debtor and all holders of Claims and Equity Interests will be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred.

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtor believes that the classification of Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because each Class of Claims and Equity Interests encompass Claims or Equity Interests, as applicable, that are substantially similar to the other Claims and Equity Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

The Plan provides that certain Classes are to receive a Pro Rata share of Liquidating Trust Assets, which will be generated, in part, by the liquidation of certain assets and the prosecution of certain Causes of Action. The potential recoveries from such actions, however, are unknown. In addition, there can be no assurance that the Liquidating Trust Assets will be sufficient to pay the fees and expenses of the Liquidating Trustee and/or the professionals employed in connection therewith or make any Distributions to the beneficiaries.

The Plan provides for no Distribution to certain Classes as specified in Article III of the Plan. The Bankruptcy Code conclusively deems these Classes to have rejected the Plan. Pursuant to section 1129(a)(10) of the Bankruptcy Code, notwithstanding the fact that these Classes are deemed to have rejected the Plan, the Bankruptcy Court may confirm the Plan if at least one Impaired Class votes to accept the Plan (with such acceptance being determined without including the vote of any "insider" in such class). As to each Impaired Class that has not accepted the Plan, the Plan may be confirmed if the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to these Classes. The Debtor believes that the Plan satisfies these requirements.

B. No Duty to Update Disclosures.

The Debtor has no duty to update the information contained in this Disclosure Statement as of the date hereof, unless otherwise specified herein, or unless the Debtor is required to do so pursuant to an order of the Bankruptcy Court. Delivery of the Disclosure Statement after the date hereof does not imply that the information contained herein has remained unchanged.

C. Representations Outside this Disclosure Statement.

This Disclosure Statement contains representations concerning or related to the Debtor and the Plan that are authorized by the Bankruptcy Code and the Bankruptcy Court. Please be advised that any representations or inducements outside this Disclosure Statement and any related documents which are intended to secure your acceptance or rejection of the Plan should not be relied upon by holders of Claims or Equity Interests that are entitled to vote to accept or reject the Plan.

D. No Admission.

The information and representations contained herein shall not be construed to constitute an admission of, or be deemed evidence of, any legal effect of the Plan on the Debtor or holders of Claims and Equity Interests.

E. Tax and Other Related Considerations.

A discussion of potential tax consequences of the Plan is provided in section IX hereof; however, the content of this Disclosure Statement is not intended and should not be construed as tax, legal, business or other professional advice. Holders of Claims and/or Equity Interests should seek advice from their own independent tax, legal or other professional advisors based on their own individual circumstances.

VII. PLAN CONFIRMATION AND CONSUMMATION

A. The Confirmation Hearing.

Bankruptcy Code section 1128(a) requires the Bankruptcy Court, after appropriate notice, to hold a hearing on confirmation of a plan (the "***Confirmation Hearing***"). On, or as promptly as practicable after the filing of the Plan and this Disclosure Statement, the Debtor will request, pursuant to the requirements of the Bankruptcy Code and the Bankruptcy Rules, that the

Bankruptcy Court schedule the Confirmation Hearing. Notice of the Confirmation Hearing (the "***Confirmation Hearing Notice***") will be provided to all known Creditors or their representatives. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

Pursuant to Bankruptcy Code section 1128(b), any party in interest may object to confirmation of a plan of reorganization. Any objection to confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules, must set forth the name of the objector, the nature and amount of Claims or Equity Interests held or asserted by the objector against the Debtor, the basis for the objection and the specific grounds of the objection, and must be filed with the Bankruptcy Court, together with proof of service thereof, and served upon: (i) counsel to the Debtor, DLA Piper LLP (US), 1717 Main Street, Suite 4600, Dallas, TX 75201 (Attn: Vincent P. Slusher and David E. Avraham), and Armstrong Teasdale LLP, 2345 Grand Boulevard, Suite 1500, Kansas City, Missouri 63105 (Attn.: Christine L. Schlomann, Richard W. Engel, Jr. and Erin M. Edelman); (ii) counsel to the Creditors' Committee, Baker & Hostetler LLP, 127 Public Square, Suite 2000, Cleveland, Ohio 44114 (Attn.: Kelly S. Burgan and Michael A. VanNiel); (iii) the Office of the United States Trustee, 215 Dean A. McGee, 4th Floor, Oklahoma City, OK 73102 (Attn.: Charles S. Glidewell and Charles E. Snyder); and (iv) such other parties as the Bankruptcy Court may order, so as to be *actually received* no later than the date and time designated in the Confirmation Hearing Notice.

Bankruptcy Rule 9014 governs objections to confirmation of the Plan. **UNLESS AN OBJECTION TO CONFIRMATION OF THE PLAN IS TIMELY SERVED UPON THE PARTIES LISTED ABOVE AND FILED WITH THE BANKRUPTCY COURT, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT IN DETERMINING CONFIRMATION OF THE PLAN.**

B. Plan Confirmation Requirements Under the Bankruptcy Code.

In order for the Plan to be confirmed, the Bankruptcy Code requires that the Bankruptcy Court determine that the Plan complies with the technical requirements of chapter 11 of the Bankruptcy Code and that the disclosures concerning the Plan have been adequate and have included information concerning all payments made or promised in connection with the Plan and this Chapter 11 Case. The Bankruptcy Code also requires that: (1) the Plan be accepted by the requisite votes of Creditors except to the extent that confirmation despite dissent is available under Bankruptcy Code section 1129(b); (2) the Plan is feasible (that is, there is a reasonable probability that the Debtor will be able to perform its obligations under the Plan without needing further financial reorganization not contemplated by the Plan); and (3) the Plan is in the "best interests" of all Creditors (that is, Creditors will receive at least as much under the Plan as they would receive in a hypothetical liquidation case under chapter 7 of the Bankruptcy Code). To confirm the Plan, the Bankruptcy Court must find that all of the above conditions are met, unless the applicable provisions of Bankruptcy Code section 1129(b) are employed to confirm the Plan, subject to satisfying certain conditions, over the dissent or deemed rejections of Classes of Claims.

1. Best Interests of Creditors.

The Bankruptcy Code requires that, with respect to an impaired class of claims or interests, each holder of an impaired claim or interest in such class either (a) accepts the plan or (b) receives or retains under the plan property of a value, as of the effective date of the plan, that is not less than the amount (value) such holder would receive or retain if the debtor was liquidated under chapter 7 of the Bankruptcy Code on the Effective Date.

The Debtor, with the assistance of its professionals, has prepared the Liquidation Analysis attached hereto as **Exhibit 2**. The Liquidation Analysis is based upon a hypothetical liquidation in a chapter 7 case. In preparing the Liquidation Analysis, the Debtor has taken into account the nature, status and underlying value of its assets, the ultimate realizable value of its assets, and the extent to which such assets are subject to liens and security interests. In addition, the Liquidation Analysis also reflects the required time and resources necessary to effectuate an orderly wind down of the Estate.

Based upon the Liquidation Analysis, the Debtor believes that liquidation under chapter 7 would result in smaller distributions, if any, being made to Creditors than those provided for in the Plan because of (a) the likelihood that other assets of the Debtor would have to be disposed of in a less orderly fashion; (b) additional administrative expenses attendant to the appointment of a trustee and the trustee's employment of attorneys and other professionals, and (c) additional expenses and Claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of leases and other executory contracts in connection with a cessation of the Debtor's operations. In the opinion of the Debtor, the recoveries projected to be available in a chapter 7 liquidation are not likely to afford the holders of Claims as great a realization potential as afforded to them under the Plan.

Accordingly, the Debtor believes that in a chapter 7 liquidation, holders of Claims would receive less than such holders would receive under the Plan. There can be no assurance, however, as to values that would actually be realized in a chapter 7 liquidation, nor can there be any assurance that a Bankruptcy Court would accept the Debtor's conclusions or concur with such assumptions in making its determinations under section 1129(a)(7) of the Bankruptcy Code.

2. Feasibility of the Plan.

Pursuant to section 1129(a)(11) of the Bankruptcy Code, a debtor must demonstrate that a bankruptcy court's confirmation of a plan is not likely to be followed by the liquidation or need for further financial reorganization of the debtor or its successor under the plan, unless such liquidation or reorganization is proposed under the plan. The Debtor has sold substantially all of its assets, and pursuant to the Plan, will transfer the Causes of Action and all remaining unencumbered assets to the Liquidating Trust to be liquidated and distributed to beneficiaries in accordance with the Plan and Liquidating Trust Agreement. Therefore, the Bankruptcy Court's confirmation of the Plan is not likely to be followed by liquidation or the need for any further reorganization.

3. Acceptance by Impaired Classes.

The Bankruptcy Code requires, as a condition to confirmation, that, except as described below, each class of claims or equity interests that is impaired under a plan, accept the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. As a general matter under the Bankruptcy Code, a class is "impaired," unless the plan: (a) leaves unaltered the legal, equitable and contractual rights to which the claim or the equity interest entitles the holder of such claim or equity interest; (b) cures any default and reinstates the original terms of such claim or equity interest; or (c) provides that, on the consummation date, the holder of such claim or equity interest receives cash equal to the allowed amount of that claim or, with respect to any equity interest, any fixed liquidation preference to which the holder of such equity interest is entitled to any fixed price at which the Debtor may redeem the security.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the plan. Thus, a class of claims will have voted to accept the plan only if two-thirds (2/3) in amount and a majority in number actually voting cast their ballots in favor of acceptance. A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

Any Class of Claims that is not occupied as of the commencement of the Confirmation Hearing by an Allowed Claim or a Claim temporarily Allowed under Bankruptcy Rule 3018 shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code. If no votes to accept or reject the Plan are received with respect to a Class whose votes have been solicited under the Plan (other than a Class that is deemed eliminated under the Plan), such Class shall be deemed to have voted to accept the Plan.

4. Section 1129(b).

The Bankruptcy Code permits confirmation of a plan even if it is not accepted by all impaired classes, as long as (a) the plan otherwise satisfies the requirements for confirmation, (b) at least one impaired class of claims has accepted it without taking into consideration the votes of any insiders in such class, and (c) the plan is "fair and equitable" and does not "discriminate unfairly" as to any impaired class that has not accepted the plan. These so called "cramdown" provisions are set forth in section 1129(b) of the Bankruptcy Code.

(a) **No Unfair Discrimination**.

The "no unfair discrimination" test requires that the plan not provide for unfair treatment with respect to classes of claims or interests that are of equal priority, but are receiving different treatment under the plan.

(b) **Fair and Equitable**.

The fair and equitable requirement applies to classes of claims of different priority and status, such as secured versus unsecured. The plan satisfies the fair and equitable requirement if no class of claims receives more than 100% of the allowed amount of the claims in such class. Further, if a class of claims is considered a dissenting class ("***Dissenting Class***"), *i.e.*, a Class of Claims that is deemed to reject the Plan because the required majorities in amount and number of votes is not received from the Class, the following requirements apply:

1. Class of Secured Claims.

Each holder of an impaired secured claim either (a) retains its liens on the subject property, to the extent of the allowed amount of its secured claim and receives deferred cash payments having a value, as of the effective date of the plan, of at least the allowed amount of such claim, (b) has the right to credit bid the amount of its claim if its property is sold and retains its liens on the proceeds of the sale (or if sold, on the proceeds thereof), or (c) receives the "indubitable equivalent" of its allowed secured claim.

2. Class of Unsecured Creditors.

Either (a) each holder of an impaired unsecured claim receives or retains under the plan property of a value equal to the amount of its allowed claim or (b) the holders of claims and interests that are junior to the claims of the Dissenting Class will not receive any property under the plan.

3. Class of Equity Interests.

Either (a) each interest holder will receive or retain under the plan property of a value equal to the greater of (i) the fixed liquidation preference or redemption price, if any, of such stock and (ii) the value of the stock, or (b) the holders of interests that are junior to the interests of the Dissenting Class will not receive any property under the plan.

The Debtor believes the Plan does not "discriminate unfairly" and will satisfy the "fair and equitable" requirement notwithstanding that certain Classes of Equity Interests are deemed to reject the Plan because no Class that is junior to such Class will receive or retain any property on account of the Claims and Equity Interests in such Class and the Plan does not provide for unfair treatment with respect to Classes of Claims or Equity Interests that are of equal priority.

VIII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

The Debtor believes the Plan is in the best interests of its Creditors and should accordingly be accepted and confirmed. If the Plan as proposed, however, is not confirmed, the following three alternatives may be available to the Debtor: (i) a liquidation of the Debtor's assets pursuant to chapter 7 of the Bankruptcy Code; (ii) an alternative plan of reorganization or liquidation may be proposed and confirmed; or (iii) the Debtor's Chapter 11 Case may be dismissed.

A. Chapter 7 Liquidation.

If a plan pursuant to chapter 11 of the Bankruptcy Code is not confirmed by the Bankruptcy Court, the Debtor's Chapter 11 Case may be converted to a liquidation case under chapter 7 of the Bankruptcy Code, in which a trustee would be elected or appointed, pursuant to applicable provisions of chapter 7 of the Bankruptcy Code, to liquidate the assets of the Debtor for distribution in accordance with the priorities established by the Bankruptcy Code. The Debtor believes that such a liquidation would result in smaller distributions being made to the Debtor's creditors than those provided for in the Plan because (a) the likelihood that other assets of the Debtor would have to be disposed of in a less orderly fashion, (b) additional administrative expenses attendant to the appointment of a trustee and the trustee's employment of attorneys and other professionals, (c) additional expenses and Claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of leases and other executory contracts in connection with a cessation of the Debtor's operations. The Debtor has found that confirmation of the Plan will provide each holder of an Allowed Claim with a recovery that is not less than such holder would receive pursuant to liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

B. Alternative Plan Pursuant to Chapter 11 of the Bankruptcy Code.

If the Plan is not confirmed, the Debtor may propose a different plan, which might involve an alternative means for the liquidation of the Debtor's assets. However, the Debtor believes that the terms of the Plan provide for an orderly and efficient liquidation of the Debtor's assets and will result in the realization of the most value for holders of Claims against the Debtor's Estate.

C. Dismissal of the Debtor's Chapter 11 Case.

Dismissal of the Debtor's Chapter 11 Case would have the effect of restoring (or attempting to restore) all parties to the *status quo ante*. Upon dismissal of the Debtor's Chapter 11 Case, the Debtor would lose the protection of the Bankruptcy Code, thereby requiring, at the very least, an extensive and time-consuming process of negotiation with the various creditors of the Debtor, and possibly resulting in costly and protracted litigation in various jurisdictions. Dismissal will also permit unpaid unsecured creditors to obtain and enforce judgments against the Debtor. The Debtor believes that these actions could lead ultimately to the liquidation of the Debtor's assets under chapter 7 of the Bankruptcy Code. Therefore, the Debtor believes that dismissal of the Debtor's Chapter 11 Case is not a preferable alternative to the Plan.

IX. CERTAIN FEDERAL TAX CONSEQUENCES

THE FOLLOWING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FOLLOWING DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, EACH HOLDER IS STRONGLY URGED TO CONSULT ITS TAX ADVISOR REGARDING THE U.S.

FEDERAL, STATE, LOCAL, AND APPLICABLE NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

TO COMPLY WITH INTERNAL REVENUE SERVICE CIRCULAR 230, TAXPAYERS ARE HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A TAXPAYER UNDER THE INTERNAL REVENUE CODE, (B) ANY SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN, AND (C) TAXPAYERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

A. General.

The following discussion summarizes certain material U.S. federal income tax consequences to the Debtor, the Liquidating Trust and holders entitled to vote on the Plan. This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended (the "***IRC***"), applicable Treasury Regulations, judicial authority and current administrative rulings and pronouncements of the Internal Revenue Service (the "***Service***"). There can be no assurance that the Service will not take a contrary view, no ruling from the Service has been or will be sought nor will any counsel provide a legal opinion as to any of the expected tax consequences set forth below.

Legislative, judicial or administrative changes or interpretations may be forthcoming that could alter or modify the statements and conclusions set forth herein. Any such changes or interpretations may or may not be retroactive and could affect the tax consequences to holders of Claims, the Liquidating Trust or the Debtor. 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 described herein.

The following summary is for general information only. The tax treatment of a holder may vary depending upon such holder's particular situation. This summary does not address all of the tax consequences that may be relevant to a holder, including any alternative minimum tax consequences and does not address the tax consequences to a holder that has made an agreement to resolve its claim in a manner not explicitly provided for in the Plan. This summary also does not address the U.S. federal income tax consequences to persons not entitled to vote on the Plan or holders subject to special treatment under the U.S. federal income tax laws, such as brokers or dealers in securities or currencies, certain securities traders, tax-exempt entities, financial institutions, insurance companies, foreign persons, partnerships and other pass-through entities, holders that have a "functional currency" other than the United States dollar and holders that have acquired Claims in connection with the performance of services. The following summary assumes that the Claims are held by holders as "capital assets" within the meaning of Section 1221 of the IRC and that all Claims denominated as indebtedness are properly treated as debt for U.S. federal income tax purposes.

The tax treatment of holders and the character, amount and timing of income, gain or loss recognized as a consequence of the Plan and the distributions provided for by the Plan may vary, depending upon, among other things: (i) whether the Claim (or portion thereof) constitutes a Claim for principal or interest; (ii) the type of consideration received by the holder in exchange for the Claim and whether the holder receives Distributions under the Plan in more than one taxable year; (iii) whether the holder is a citizen or resident of the United States for tax purposes, is otherwise subject to U.S. federal income tax on a net basis, or falls into any special class of taxpayers, such as those that are excluded from this discussion as noted above; (iv) the manner in which the holder acquired the Claim; (v) the length of time that the Claim has been held; (vi) whether the Claim was acquired at a discount; (vii) whether the holder has taken a bad debt deduction with respect to the Claim (or any portion thereof) in the current or prior years; (viii) whether the holder has previously included in income accrued but unpaid interest with respect to the Claim; (ix) the method of tax accounting of the holder; (x) whether the Claim is an installment obligation for U.S. federal income tax purposes; and (xi) whether the "market discount" rules are applicable to the holder. Therefore, each holder should consult its tax advisor for information that may be relevant to its particular situation and circumstances, and the particular tax consequences to such holder of the transactions contemplated by the Plan.

B. U.S. Federal Income Tax Treatment With Respect to the Liquidating Trust.

It is intended that the Liquidating Trust will be treated as a "grantor trust" for U.S. federal income tax purposes. In general, a grantor trust is not a separate taxable entity. The Service, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an advanced ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The Debtor is not requesting a private letter ruling regarding the status of the Liquidating Trust as a grantor trust. Consistent with the requirements of Revenue Procedure 94-45, however, the Liquidating Trust Agreement requires all relevant parties to treat, for federal income tax purposes, the transfer of the Debtor's assets to the Liquidating Trust as (i) a transfer of such assets to the beneficiaries of the Liquidating Trust (to the extent of the value of their respective interests in the applicable Liquidating Trust Assets) followed by (ii) a transfer of such assets by such beneficiaries to the Liquidating Trust (to the extent of the value of their respective interests in the applicable Liquidating Trust Assets), with the beneficiaries of the Liquidating Trust being treated as the grantors and owners of the Liquidating Trust. Each beneficiary of the Liquidating Trust will generally recognize gain (or loss) in its taxable year that includes the Effective Date in an amount equal to the difference between the amount realized in respect of its Claim and its adjusted tax basis in such Claim. The amount realized for this purpose should generally equal the amount of cash and the fair market value of any other assets received or deemed received for U.S. federal income tax purposes under the Plan in respect of such holder's Claim. A holder that is deemed to receive for U.S. federal income tax purposes a non-cash asset under the Plan in respect of its Claim should generally have a tax basis in such asset in an amount equal to the fair market value of such asset on the date of its deemed receipt.

The Plan and the Liquidating Trust Agreement generally provide that the beneficiaries of the Liquidating Trust must value the assets of the Liquidating Trust consistently with the values determined by the Liquidating Trustee for all U.S. federal, state, and local income tax purposes. As soon as possible after the Effective Date, the Liquidating Trustee shall make a good faith valuation of the assets transferred to the Liquidating Trust.

Consistent with the treatment of the Liquidating Trust as a grantor trust, the Liquidating Trust Agreement and the Plan will require each holder to report on its U.S. federal income tax return its allocable share of the Liquidating Trust's income. Therefore, a holder may incur a U.S. federal income tax liability with respect to its allocable share of the income of the Liquidating Trust whether or not the Liquidating Trust has made any distributions to such holder. The character of items of income, gain, deduction, and credit to any holder and the ability of such holder to benefit from any deduction or losses will depend on the particular situation of such holder.

In general, a distribution of underlying assets from the Liquidating Trust to a beneficiary thereof may not be taxable to such holder because such holders are already regarded for U.S. federal income tax purposes as owning such assets. Holders are urged to consult their tax advisors regarding the appropriate U.S. federal income tax treatment of distributions from the Liquidating Trust.

The Liquidating Trustee will file with the Service tax returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and will also send to each holder a separate statement setting forth such holder's share of items of Liquidating Trust income, gain, loss, deduction, or credit. Each such holder will be required to report such items on its U.S. federal income tax return.

The discussion above assumes that the Liquidating Trust will be respected as a grantor trust for U.S. federal income tax purposes. If the Service were to successfully challenge such classification, the U.S. federal income tax consequences to the Liquidating Trust and the beneficiaries of the Liquidating Trust could differ materially from those discussed herein (including the potential for an entity level tax to be imposed on all income of the Liquidating Trust).

C. U.S. Federal Income Tax Treatment With Respect to Holders of Allowed Claims that are Beneficiaries of the Liquidating Trust.

Holders of Allowed Claims as of the Effective Date that are beneficiaries of the Liquidating Trust should be treated as receiving from the Debtor their respective shares of the applicable assets of the Liquidating Trust in satisfaction of their Allowed Claims, and simultaneously transferring such assets to the Liquidating Trust. Accordingly, a holder of such Claim should generally recognize gain or loss in an amount equal to the amount deemed realized on the Effective Date (as described above) less its adjusted tax basis of its Claim. Additionally, such holders should generally recognize their allocable share of income, gain, loss and deductions recognized by the Liquidating Trust on an annual basis.

Because a holder's ultimate share of the assets of the Liquidating Trust based on its Allowed Claim will not be determinable on the Effective Date due to, among other things, the existence of Disputed Claims and the value of the assets at the time of actual receipt not being ascertainable on the Effective Date, such holder should recognize additional or offsetting gain or loss if, and to the extent that, the aggregate amount of cash and fair market value of the assets of the Liquidating Trust ultimately received by such holder is greater than or less than the amount used in initially determining gain or loss in accordance with the procedures described in the preceding paragraph. It is unclear when a holder of an Allowed Claim that is a beneficiary of the

Liquidating Trust should recognize, as an additional amount received for purposes of computing gain or loss, an amount attributable to the disallowance of a Disputed Claim.

The character of any gain or loss as capital gain or loss or ordinary income or loss and, in the case of capital gain or loss, as short-term or long-term, will depend on a number of factors, including: (i) the nature and origin of the Claim; (ii) the tax status of the holder of the Claim; (iii) whether the Claim has been held for more than one year; (iv) the extent to which the holder previously claimed a loss or bad debt deduction with respect to the Claim; and (v) whether the Claim was acquired at a market discount. A holder that purchased its Claim from a prior holder at a market discount may be subject to the market discount rules of the IRC. Under those rules (subject to a *de minimis* exception), assuming that such holder has made no election to accrue the market discount and include it in income on a current basis, any gain recognized on the exchange of such Claim generally would be characterized as ordinary income to the extent of the accrued market discount on such Claim as of the date of the exchange.

It is possible that the Service may assert that any loss should not be recognizable until the Liquidating Trustee makes its final distribution of the assets of the Liquidating Trust. Holders should consult their tax advisors regarding the possibility that the recognition of gain or loss may be deferred until the final distribution of the assets of the Liquidating Trust.

Although not free from doubt, holder of Disputed Claims should not recognize any gain or loss on the date that the Liquidating Trust Assets are transferred to the Liquidating Trust, but should recognize gain or loss in an amount equal to: (i) the amount of cash and the fair market value of any other property actually distributed to such holder less (ii) the adjusted tax basis of its Claim. It is possible, however, that such holders may be required to recognize the fair market value of such holder's allocable share of the Liquidating Trust Assets, as an amount received for purposes of computing gain or loss, either on the Effective Date or the date such holder's Claim becomes an Allowed Claim.

Holders of Allowed Claims will be treated as receiving a payment of interest (includible in income in accordance with the holder's method of accounting for tax purposes) to the extent that any cash or other property received (or deemed received) pursuant to the Plan is attributable to accrued but unpaid interest, if any, on such Allowed Claims. The extent to which the receipt of cash or other property should be attributable to accrued but unpaid interest is unclear. Each holder should consult its tax advisor regarding the determination of the amount of consideration received under the Plan that is attributable to interest (if any). A holder generally will be entitled to recognize a loss to the extent any accrued interest was previously included in its gross income and is not paid in full.

X. RECOMMENDATION AND CONCLUSION

The Debtor believes that the Plan is in the best interests of its Estate, Creditors and other interested parties and urges the holders of Impaired Claims entitled to vote to accept the Plan and to evidence such acceptance by properly voting and timely returning their ballots.

Dated: April 14, 2017

Respectfully submitted,

Abengoa Bioenergy Biomass of Kansas, LLC

By: *s/ Gerson Santos-Leon*
Name: Gerson Santos-Leon
Title: Executive Vice President