

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN RE: ) Case No: BK16-41395  
 )  
HAPPY JACK'S PETROLEUM, INC., ) CHAPTER 11  
 )  
Debtor. )

**DISCLOSURE STATEMENT OF  
HAPPY JACK'S PETROLEUM, INC.**

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Attorneys for Debtor and Debtor in Possession

DATED: April 17, 2017.

## I. INTRODUCTION

### A. GENERAL

This Disclosure Statement for Debtor's Plan of Reorganization has been prepared by the Debtor and Debtor-in-Possession in the above captioned and numbered Chapter 11 reorganization case (hereinafter, the "Debtor"), pursuant to the provisions of § 1125 of the Bankruptcy Code (11 U.S.C. §101 et seq.) which requires that there be submitted to holders of Claims against or interests in the Debtor, a copy of the Plan or a summary of such Plan and a written Disclosure Statement containing adequate information about the Debtor of a kind and in sufficient detail, as far as is reasonably practicable, that would enable a hypothetical, reasonable investor typical of holders of Claims against and interests in the Debtor of the relevant class to make an informed judgment about acceptance or rejection of the Plan.

The Disclosure Statement has been approved by the Bankruptcy Court as containing adequate information to permit holders of Claims against and interests in the Debtor to make an informed judgment about the Plan.<sup>1</sup>

The Bankruptcy Court has set at \_\_\_\_\_ o'clock \_\_\_\_ .m. Central Standard Time as the time and date for a hearing on the acceptance and confirmation of the Plan. Holders of Claims or interests may vote with respect to the Plan by completing and delivering the enclosed ballot to Gross & Welch, P.C., L.L.O., ATTN: William L. Biggs, 2120 South 72<sup>nd</sup> Street, Suite 1500, Omaha, Nebraska 68124, on or before \_\_\_\_\_ o'clock p.m. Central Standard Time on \_\_\_\_\_.

The allowance of any Claim or interest for purposes of voting on the Plan shall not constitute an allowance of the Claim for the purpose of receiving any distribution pursuant to the Plan. Likewise, any references in the Plan or Disclosure Statement to any Claims or interests shall not constitute an admission by the Debtor of the existence, nature, extent or validity of any such Claims or interests.

The statements contained in this Disclosure Statement are made as of the date hereof unless another time is specified, and neither the delivery of this Disclosure Statement nor any exchange of rights made in connection with it shall, under any circumstances, create an implication that there has been no change in the facts set forth herein since the date hereof.

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<sup>1</sup> All capitalized terms used herein and not otherwise defined herein have the meaning given to them in Article I of the Plan. Any term used in initially capitalized form in this Disclosure Statement that is not defined herein but that is used in the Bankruptcy Code shall have the meaning ascribed to such term in the Bankruptcy Code. Additionally, the rules of construction contained in Section 102 of the Bankruptcy Code apply to the construction of this Disclosure Statement.

No representations concerning the Debtor, the value of its property or the value of any benefits offered to holders of Claims or interests in connection with the Plan are authorized by the Debtor other than as set forth in this Disclosure Statement and the Plan. Any representations or inducements made to secure your acceptance or rejection of the Debtor's Plan, which are contrary to information contained in this Disclosure Statement should not be relied upon by you in arriving at your decision and any such additional representations and inducements should be reported to:

William L. Biggs  
Frederick D. Stehlik  
Zachary Lutz-Priefert  
Gross & Welch, P.C., L.L.O.  
1500 Omaha Tower  
2120 South 72<sup>nd</sup> Street  
Omaha, NE 68124  
(402) 392-1500

Acceptance of the Plan by each Class of holders of Claims or interests voting on the Plan is important. In order for the Plan to be accepted by a Class of holders of Claims, persons that hold at least two-thirds in amount and more than one-half in number of the Allowed Claims in such Class actually voting to accept or reject the Plan must vote to accept the Plan. In order for the Plan to be accepted by a Class of Interests, persons that hold at least two-thirds in number of Allowed Interests actually voting on the Plan must vote in favor of the Plan.

February 1, 2017 was established as the last date upon which proofs of claim could be filed by the parties who received the original notice of bankruptcy. Creditors were advised of that date upon notice. A Creditor whose Claim was not listed on the Debtor's Schedules or whose Claim was listed on the Schedules as disputed, contingent or unliquidated and who desires to participate in the case, to have his or her vote on the Plan counted or to share in any distribution must have filed a proof of claim on or before February 1, 2017, which date was fixed as the last date for filing a proof of claim. Any Creditor who desires to rely on the list of Creditors contained in the Debtor's schedules and any amendments thereto has the responsibility for determining that the Claim was accurately listed.

Any Creditor whose Claim was not scheduled or whose Claim was scheduled as disputed, contingent, or unliquidated, who failed to file their proof of claim on or before February 1, 2017, is barred from asserting any Claim or right against the Debtor, any successor of the Debtor, or property of the Estate. The holder of such Claim will be barred from participating in any distribution in this case.

THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECTED TO A CERTIFIED AUDIT AND IS BASED, IN PART, UPON INFORMATION PREPARED BY PARTIES OTHER THAN THE DEBTOR. CONSEQUENTLY, THE DEBTOR IS

UNABLE TO WARRANT OR REPRESENT THAT ALL THE INFORMATION CONTAINED HEREIN IS COMPLETELY ACCURATE. THE APPROVAL BY THE COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE COURT OF THE PLAN OR A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN. YOU ARE URGED TO CAREFULLY READ THIS DISCLOSURE STATEMENT, THE ACCOMPANYING PLAN ATTACHED AS EXHIBIT "A", AND THE ATTACHED EXHIBITS IN ORDER TO OBTAIN ADEQUATE INFORMATION TO ENABLE YOU TO DECIDE WHETHER TO ACCEPT OR REJECT THE PLAN.

## **B. SUMMARY OF THE PLAN**

Happy Jack's Petroleum, Inc. ("Happy Jack's") is a family owned and operated company which owns and maintains a convenience store and bulk fuel hauling business. The Happy Jack's Plan of Reorganization shall include nine classes of creditors. The first class is Happy Jack's secured creditors. The second class shall be Happy Jack's vendors who are currently, or who were as of the date of filing for bankruptcy doing business with Happy Jack's. ("Class Two"). The third class of Happy Jack's creditors are those customers who have overpaid for products ("Class Three"). The fourth class of Happy Jack's creditors are those customers who contracted with Happy Jack's for the purchase of propane and have yet to receive propane deliveries as of the date of filing ("Class Four"). The fifth class of creditors shall be those customers who had contracts with Happy Jack's for the purchase of fuel and who, as of the date of filing, were owed less than 3,000 gallons of fuel ("Class Five"). The sixth class will be all other customers who have pre-purchased fuel from Happy Jack's prior to the date of filing and who are still owed between 3,000 gallons and 7,000 gallons of fuel ("Class Six"). The seventh class of creditors shall be Happy Jack's customers who have pre-purchased fuel from Happy Jack's prior to the date of filing and who are still owed between 7,000 and 50,000 gallons of fuel. ("Class Seven"). The eighth class of creditors shall be all unsecured creditors who are no longer doing business with Happy Jack's. ("Class Eight"). The final class shall be the Debtor and its equity shareholders ("Class Nine").

During the life of its Plan, Happy Jack's shall continue to operate the convenience store and its bulk fuel business. Happy Jack's will satisfy the majority of its creditors by honoring existing contracts and using the contracted-for rates. Happy Jack's Plan will call for paying Class One, its secured creditors, pursuant to the contracts already established with said secured creditors, in the ordinary course of business.

Happy Jack's Plan will call for a ten-year Plan during the life of which Happy Jack's will perform on its prepaid fuel and propane contracts. No later than December 20, 2017, Happy Jack's shall pay its Classes Two and Three vendors in full and provide propane to all of its Class Four creditors in full. No later than December 20, 2018, Happy Jack's will have supplied all fuel to Class Five members in full. No later than December 20, 2019, Happy Jack's will have provided all fuel to its Class Six creditors in

full. No later than December 20, 2024, Happy Jack's shall have provided fuel in full to its Class Seven creditors. In the final two years of the Plan, 2025 and 2026, Happy Jack's shall make annual payments of \$50,000.00 per year to its Class Eight creditors.

Any of the remaining debt owed by Happy Jack's as of December 21, 2026, except for secured debt which has not come due and fully owing at that time, shall be discharged along with all debt of those individuals who have personally guaranteed Happy Jack's debt. After December 21, 2026, Happy Jack's will continue to pay on its secured debts as they come due pursuant to contracts with secured creditors.

### **C. EXECUTORY CONTRACTS OF THE DEBTOR**

The Debtor currently only has one true executory contract, a lease with Ascentium Capital for office equipment, software and hardware. In addition to Happy Jack's sole written lease, Happy Jack's also has a number of unwritten leases and agreements with companies owned by Happy Jack's shareholders personally. As part of its reorganization, Happy Jack's intends to enter into a written lease with a company known as Integrated Business Works to lease the land upon which Happy Jack's "C" store sits. Integrated Business Works is owned by a 40% shareholder of Happy Jack's, Vicki Hill.

Happy Jack's also leases trucks from Jack Hill. Pursuant to Happy Jack's Plan of Reorganization, Happy Jack's intends to enter into a written lease and/or purchase of those trucks from Jack Hill.

Finally, one of Happy Jack's equity interest holders, Wade B. Hill, is a lessor under a lease with NKC Railnet. Happy Jack's intends to take over obligations for said lease.

## **II. EXPLANATION OF CHAPTER 11**

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Pursuant to Chapter 11, the debtor in possession attempts to reorganize its business for the benefit of the debtor, its creditors, and other parties-in-interest. A voluntary Chapter 11 case begins when the Debtor files a petition under Chapter 11 and the filing of a voluntary petition constitutes an order for relief.

The commencement of a Chapter 11 case creates an estate comprised of all the legal and equitable interests of the debtor in property as of the date the petition is filed. Sections 1101, 1107 and 1108 of the Bankruptcy Code provide that a debtor may continue to operate the debtor's business as a "debtor in possession" unless the Bankruptcy Court orders the appointment of a trustee. The Debtor filed its voluntary Chapter 11 Petition on September 16, 2016. The Debtor remains in possession of its property and continues to operate its business as a debtor in possession.

The filing of a Chapter 11 petition also triggers the automatic stay provisions of the Bankruptcy Code. Section 362 of the Bankruptcy Code provides for an automatic stay of all attempts to collect pre-petition claims from the Debtor or otherwise interfere with its property or business.

Formulation of a plan of reorganization is a principal purpose of a Chapter 11 case. The Plan sets forth the means for satisfying the holders of Claims against and interests in the Debtor. Unless a trustee is appointed, only the Debtor may file a plan during the first 120 days of a Chapter 11 case or during such an extended period that is ordered by the Bankruptcy Court pursuant to Section 1121(d) of the Bankruptcy Code. The Debtor's exclusive period can be extended on a motion filed to extend that period. The Debtor may also file with the Court a motion to extend the time for filing the Disclosure Statement and Plan.

After the plan of reorganization has been filed, the holders of Claims against or interests in the Debtor are permitted to vote on whether to accept the plan. Section 1125 of the Bankruptcy Code requires full disclosure before solicitation of acceptances of a Chapter 11 plan. This Disclosure Statement is presented to holders of Claims against and interests in the Debtor to satisfy the requirements of Section 1125 of the Bankruptcy Code.

### **III. VOTING INSTRUCTIONS AND PROCEDURES**

#### **A. NOTICE TO HOLDERS OF CLAIMS AND INTERESTS**

This Disclosure Statement is being transmitted to holders of Claims that are entitled under the Bankruptcy Code to vote on the Plan, as well as other parties. The primary purpose of this Disclosure Statement is to provide adequate information to enable holders of Claims against the Debtor to make a reasonably informed decision whether to vote to accept or reject the Plan.

Approval by the Bankruptcy Court of this Disclosure Statement means that this Disclosure Statement contains information of a kind and in sufficient and adequate detail to enable such Claim holders to make an informed judgment with respect to acceptance or rejection of the Plan. THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR AN ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT.

ALL HOLDERS OF CLAIMS AGAINST THE DEBTOR ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND ITS APPENDICES CAREFULLY AND IN THEIR ENTIRETY BEFORE DECIDING TO VOTE EITHER TO ACCEPT OR TO REJECT THE PLAN. This Disclosure Statement contains important information about the Plan, considerations pertinent to acceptance or rejection of the Plan, and developments concerning the Chapter 11 Case.

IF THE PLAN IS APPROVED BY THE REQUISITE VOTE OF HOLDERS OF THE CLAIMS ENTITLED TO VOTE AND IS SUBSEQUENTLY CONFIRMED BY THE BANKRUPTCY COURT, THE PLAN WILL BIND ALL HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTOR, WHETHER OR NOT THEY WERE ENTITLED TO VOTE OR DID VOTE ON THE PLAN AND WHETHER OR NOT THEY RECEIVE OR RETAIN ANY DISTRIBUTIONS OR PROPERTY UNDER THE PLAN. THUS ALL HOLDERS OF CLAIMS AGAINST THE DEBTOR ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND ITS APPENDICES AND SCHEDULES CAREFULLY BEFORE DECIDING TO VOTE EITHER TO ACCEPT OR REJECT THE PLAN.

THIS DISCLOSURE STATEMENT IS THE ONLY DOCUMENT AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES TO ACCEPT OR REJECT THE PLAN. No solicitation of votes may be made except after distribution of this Disclosure Statement, and no person has been authorized to distribute any information concerning the Debtor other than the information contained herein.

CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BY ITS NATURE FORWARD LOOKING AND MAY CONTAIN ESTIMATES, ASSUMPTIONS AND PROJECTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL FUTURE RESULTS. Except as otherwise specifically and expressly stated herein, this Disclosure Statement does not reflect any events that may occur subsequent to the date hereof and that may have a material impact on the information contained in this Disclosure Statement.

**INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTING FIRM AND HAS NOT BEEN PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.**

## **B. SOLICITATION PACKAGE**

Along with the mailing of this Disclosure Statement, as part of the solicitation of acceptances of the Plan, each person entitled to vote to accept or to reject this Plan will receive:

1. the Plan;
2. notification of
  - (a) the time by which Ballots must be submitted;
  - (b) the date, time and place of the hearing to consider confirmation of the Plan and related matters; and
  - (c) the time for filing objections to confirmation of the Plan; and

3. Ballot (and return envelope) to be used in voting to accept or to reject the Plan.

Any person who receives this Disclosure Statement but does not receive a Ballot and who believes that he/she is entitled to vote to accept or reject the Plan should contact Cheri M. Snyder at the law firm of Gross & Welch, P.C., L.L.O., 1500 Omaha Tower, 2120 South 72<sup>nd</sup> Street, Omaha, Nebraska 68124, (402) 392-1500.

### **C. VOTING PROCEDURES, BALLOTS AND VOTING DEADLINE**

After carefully reviewing the Plan, this Disclosure Statement and the detailed instructions accompanying your Ballot, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed Ballot. Only original Ballots will be accepted. You must complete, sign and return your Ballot in the envelope provided.

IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE PROPERLY COMPLETED AS SET FORTH ABOVE AND IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND RECEIVED NO LATER THAN \_\_\_\_\_ AT \_\_\_\_\_ (“VOTING DEADLINE”) BY \_\_\_\_\_.

### **D. CONFIRMATION HEARING AND DEADLINE FOR OBJECTIONS TO CONFIRMATION.**

Pursuant to § 1128 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3017(c)7the Bankruptcy Court has scheduled a Confirmation Hearing for \_\_\_\_\_, 2017, at \_\_\_\_\_. The Bankruptcy Court may adjourn the Confirmation Hearing from time to time without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing. Objections to Confirmation of the Plan must be filed with the Bankruptcy Court no later than \_\_\_\_\_.

## **IV. BACKGROUND OF THE DEBTOR**

### **A. BACKGROUND**

In 1971 Hubert and Mabel Beal formed an unincorporated entity known as Beal Service. After the death of both Hubert and Mabel, Beal Service’s ownership passed to their individual children, one of whom was Vicki Hill, one of the current owners of Happy Jack’s Petroleum, Inc.

In 2003, Vicki Hill, her husband Jack Hill, and her son, Wade Hill, formed the entity known as Happy Jack’s. After the formation of Happy Jack’s in 2003, the Hills purchased Beal Service from Hubert and Mabel’s children and renamed the entity “Happy Jack’s”. Since 2003, Happy Jack’s has operated a convenience store and bulk



business, for the distribution of fuel, goods, and has also at times jointly operated with its owners and another entity with common ownership known as Energy Storage & Trading, LLC ("Energy Storage") a wholesale business for the sale and distribution of fuel.

## **B. MANAGEMENT STRUCTURE OF THE DEBTOR**

Forty percent of Happy Jack's is owned by Vicki Hill, forty percent is owned by Jack Hill, and twenty percent is owned by Wade Hill. Jack Hill serves as the President of Happy Jack's, Wade Hill serves as the Vice President of Happy Jack's, and Vicki Hill serves as the Treasurer and Secretary. Over the course of the last thirteen years, Jack Hill and Wade Hill have alternated primary management responsibilities depending on the abilities of both parties. At this time, Wade Hill is the individual primarily responsible for the operation of Happy Jack's.

## **V. EVENTS LEADING TO BANKRUPTCY**

In 2009, Happy Jack's briefly did business with an entity known as Western Terminal Transportation, L.L.C. ("WTT"). Beginning in 2010, Happy Jack's began to do business more extensively with WTT.

Beginning in 2008 and continuing through 2014, as the price of fuel increased, and as electrical conversion began to be subsidized by the United States Government, Happy Jack's saw a sharp decline in business. At the same time as Happy Jack's saw a sharp decline in business, it lost two suppliers of fuel, Bosselman and Sinclair. As a result of the loss of suppliers Bosselman and Sinclair, as well as other suppliers, Happy Jack's was forced to turn to WTT as its primary supplier of fuel.

As part of Happy Jack's business model, Happy Jack's provided prepaid fuel contracts to its customers which would allow a customer to pre-purchase fuel and Happy Jack's would in turn attempt to procure fuel at a lower contract price. This would generate a profit for Happy Jack's which was greater than that ordinarily seen in a fuel purchase contract. Two different iterations of those pre-purchase fuel agreements existed, with the most recent iteration only being entered into in late December of 2015 or late January of 2016.

Over the course of time, Happy Jack's began to acquire a sizeable debt with WTT. At its peak, in approximately November of 2014, Happy Jack's owed WTT a statement balance of \$1.86 million. In July 2015 WTT required Happy Jack's to move to a cash payment for each load of fuel delivered. At the end of July, WTT believed it was unpaid or underpaid, and refused to supply fuel to Happy Jack's going forward. By the time WTT began to refuse to sell to Happy Jack's, Happy Jack's debt to WTT had been reduced from \$1.86 million to \$1.28 million. Prior to WTT's refusal to sell to Happy Jack's and due to pressure from WTT, Happy Jack's used prepaid fuel funds to insure that WTT would continue to provide fuel, particularly for the prepaid fuel contracts. WTT was aware that the funds used were pre-purchase fuel funds. Happy Jack's only used

the pre-purchase fuel funds because of an expectation that it would receive the fuel for those funds in return. However, WTT only delivered approximately half of the fuel which was purchased with prepaid fuel funds to Happy Jack's prior to WTT's refusal to sell to Happy Jack's. On November 3, 2015, WTT filed suit against Happy Jack's and its owners. Throughout the course of 2016 until the date of filing, Happy Jack's attempted to settle the dispute with WTT, however, was ultimately unsuccessful.

Ultimately, the primary events leading to bankruptcy are those same events which have plagued countless debtors between 2008 and now, a downturn in the economy in 2008 along with repercussions that continued to last through 2014 created a situation in which a debtor was simply unable to continue to stay ahead of its debts.

## **VI. OPERATIONS AND SIGNIFICANT EVENTS DURING THE REORGANIZATION TO DATE**

### **A. CHAPTER 11 PROCEEDING**

#### **1. Continuation of Business: Stay of Litigation.**

On September 16, 2016 the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code. Since the petition date, the Debtor has continued to operate as Debtor in Possession. Pursuant to the Bankruptcy Code, the Debtor is required to comply with certain statutory reporting requirements, including the filing of monthly operating reports. The Debtor is authorized to operate its business in the ordinary course of business.

In accordance with the Bankruptcy Code, the Debtor is not permitted to pay any claims or obligations that arose prior to the petition date unless specifically authorized by the Bankruptcy Court. Similarly, claimants may not enforce any claims against the Debtor that arose prior to the Petition Date unless specifically authorized by the Bankruptcy Court. In addition, as Debtor in Possession, the Debtor has the right, subject to the Bankruptcy Court's approval, to assume or reject any executory contracts or unexpired leases in existence at the Petition Date. Parties having claims as a result of such rejection may file claims with the Bankruptcy Court which will be addressed as part of the Chapter 11 case.

During the pendency of the Chapter 11 Case, the Court has certain supervisory powers over the Debtor's operations. These powers are generally limited to reviewing and ruling upon applications and motions filed by the Debtor and any objections thereto raised by a party in interest. Such motions and applications primarily pertain to the Debtor's business operations or proposed transactions and adversary proceedings and contested matters filed by parties in interest against the Debtor. In addition, the Bankruptcy Court has exercised supervisory powers in connection with the employment and compensation of attorneys, accountants, and other professionals retained by the Debtor.

**2. A Number of Motions Were Filed At The Inception Of The Case**

On September 16, 2016, Happy Jack's filed an application to employ the law firm of Gross & Welch, P.C., L.L.O. On September 27, 2016, Happy Jack's filed a motion to assume certain executory contracts. Said motion was denied on October 27, 2016. On September 27, 2016, Happy Jack's filed its Motion for Authority to Incur Debt with Administrative Expense Priority Over Other Administrative Expenses (Superpriority) Pursuant to 11 U.S.C. § 364(c)(1) and to Grant Lien. (This motion was later withdrawn following an objection from WTT and a stipulation between the parties, and Happy Jack's filed an Amended Motion for Authority to Incur Debt with Administrative Expense Priority Over Other Administrative Expenses (Superpriority) Pursuant to 11 U.S.C. § 364(c)(1) and to Grant Lien, with the consent of WTT.)

**3. Cash Collateral Authority**

No cash collateral order has been requested nor is a cash collateral order needed.

**4. Motion for Approval of Appointment of Schroeder & Schreiner as accountants for the Debtor**

On February 3, 2017 the Debtor filed an application to employ Bruce E. Schreiner and the firm of Schroeder & Schreiner, P.C., as accountants for the Debtor. On February 6, 2017 the order granting that application was entered.

**5. Unsecured Creditors Committee**

No committee of unsecured creditors has been appointed in this case.

**6. Professionals**

On the same day as the case was filed, the Debtor filed an application to employ Gross & Welch and William L. Biggs, Frederick D. Stehlik, and Zachary Lutz-Priefert of that firm. On October 12, 2016, the order granting the application for approval was entered.

**7. Summary of Claims Process and Bar Dates**

**(a) Schedules and Statement of Financial Affairs**

The Debtor filed its Schedules of Assets and Liabilities and Statement of Financial Affairs (collectively the Schedules and Statement of Affairs) with the Bankruptcy Court on September 29, 2016. Among other things, the Schedules and Statement of Affairs sets forth claims of

known creditors against the Debtor as of the Petition Date based on the Debtor's books and records. The Schedules reflect that the Debtor had creditors holding unsecured priority claims of \$66,173.82 and creditors holding unsecured nonpriority claims of \$2,478,016.15. Creditors holding secured claims were reported at \$1,598,000.00

**(b) Claims Bar Date and Proofs of Claim**

The Bankruptcy Court set February 1, 2017, as the Claims Bar Date in this case. All parties are required to submit a proof of claim by the deadline. The Debtor has reviewed the claims filed in the Chapter 11 case. As of the claims bar date, unsecured claims (not including claims of insiders totaled \$1,588,539.49.

**B. BUSINESS OPERATIONS DURING THE CHAPTER 11**

Happy Jack's has continued to haul fuel in its normal course of business. Happy Jack's has continued operation of the C-store in its normal course of business.

**C. DEVELOPMENT AND SUMMARY OF BUSINESS PLAN**

**1. Development of the Business Plan**

Happy Jack's shall continue to renew prepaid fuel contracts at prices which reflect fair market value. Happy Jack's will continue to attempt to maintain new prepaid fuel contracts, and ultimately, Happy Jack's will work to become more profitable, including removing any unnecessary overhead, and unprofitable programs offered by Happy Jack's. Over the past several years, Happy Jack's has shown substantial losses. However, most of these were related to receivable write-offs which it had been carrying for more than seven (7) years and were treated as a loss in isolated years as opposed to be being spread out over several years. Prior to the economic downturn, Happy Jack's routinely made at least \$50,000.00 per year. It is anticipated with the stabilization of the economy and the reorganization which restructures as to how debts are owed, that Happy Jacks will be able to return to showing a profit of at least \$50,000.00 per year.

**2. Assumptions by the Debtor Concerning the Implementation of The Plan**

A number of assumptions are made by the Debtor in its ability to craft a workable Plan. The first assumption by the Debtor is that the commodities market will remain stable and the Debtor will be able to buy and sell fuel at a reasonable price without a sharp uptick in the market. The second assumption is

that the Debtor will be able to actually procure fuel or obtain funds to satisfy its obligations in any given year of the Plan.

**3. Negotiation and Discussions with the Principal Secured Creditor,**

Happy Jack's has discussed re-amortizing its mortgage note with its principal secured creditor to reduce yearly payments by approximately \$12,000. Happy Jack's has also discussed with its secured creditor the possibility of lowering the interest rate on its operating note.

**VII. SUMMARY OF THE PLAN**

**A. GENERAL**

The Plan sets forth the means of satisfying the claims against or interest in a Debtor. Confirmation of the Plan by the Bankruptcy Court makes the Plan binding upon the Debtor, an issuer of securities under the Plan, any person or entity acquiring property under the Plan, and any creditor or equity security holder in the Debtor, whether or not such creditor or equity security holder (1) is impaired under or has accepted the Plan; or (2) receives or retains any property under the Plan.

Subject to certain limited exceptions, and except as provided in the Plan itself, the confirmation order discharges the Debtor from any debt that arose prior to the date of confirmation of the Plan and substitutes therefore the obligations specified under the confirmed Plan.

**B. CLASSIFICATION OF CLAIMS AND INTERESTS AND DISTRIBUTION TO CLASSES**

Section 1122 of the Bankruptcy Code provides that the Plan of Reorganization must classify the claims and interests of the Debtor's creditors and equity security holders. In accordance with §1122, the Plan divides claims and interests into classes and sets forth the treatment of each class (other than certain administrative claims and priority tax claims which, pursuant to §1123(a)(1) do not need to be classified). The Debtor is also required under §1122 to classify claims against an interest in the Debtor into classes that contain claims and interests that are substantially similar to other claims or interests in such class.

The Debtor believes that the Plan has classified all claims and interests in compliance with the provisions of §1122 and applicable case law, but it is possible that a holder of a claim or interest may challenge the Debtor's classification and that the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed. In that event, the Debtor intends, to the extent permitted by law, to make reasonable modifications to classifications under the Plan to permit confirmation and to use the Plan acceptance received in the solicitation for purposes of obtaining the approval of the reconstituted class or classes of which each accepting holding is

ultimately deemed to be a member.

The amount of any impaired claim that is ultimately allowed by the Bankruptcy Court may vary from any estimated amount of such claim and accordingly the total claims allowed by the Bankruptcy Court with respect to each impaired class of claims may also vary from the estimates contained herein. Thus the value of the property that will ultimately be received by a particular holder of an allowed claim under the Plan may be adversely or favorably affected by the aggregate amount of claims ultimately allowed in the appropriate classes.

The following is a summary of the Debtor's Plan showing the unclassified claims and the classified claims along with a summary of the consideration to be provided to each.

1. Treatment of Unclassified Claims Under the Plan

**(a) Administrative Claims**

The Plan provides for administrative expense claims to be paid in full. The claims consist of the actual and necessary costs and expenses of the Chapter 11 case that are allowed under §503(b) and §507(a)(1) of the Bankruptcy Code. They include, among other things, the cost of operating the Debtor's business following the Petition Date (post-petition salaries and other benefits of the Debtor's employees, amounts owed to vendors providing goods and services to the Debtor during the Chapter 11 case, tax obligations incurred after the Petition Date, and the actual and reasonable fees and expenses of the professionals retained by the Debtor). All payments to professionals in connection with the Chapter 11 case will be made in accordance with the procedure established by the Bankruptcy Code and the Bankruptcy Rules and will be subject to approval by the Bankruptcy Court as being reasonable. The Debtor anticipates that the amount of non-ordinary course administrative claims incurred during the bankruptcy case, which are primarily professional fees which have been or will be paid in part during the bankruptcy case will total approximately \$150,000 when finally allowed, including the pre-petition retainer advanced by the Debtor with the balance being paid out of assets of the Debtor earned on a monthly basis.

The Plan provides that on or as soon as reasonably practical after the Effective Date and as soon as such administrative claims are allowed, the holders of such claims shall receive cash in an amount equal to the unpaid portion of their allowed claims, unless holders of such claims agree with the Debtor as to other terms of repayment.

Holders of administrative claims based on liabilities incurred by the Debtor in the ordinary course of their business will not be required to file or

serve a request for payment of such claims, as these liabilities will be paid and settled in accordance with the terms and conditions of the particular agreement and law governing such obligations.

**(b) Priority and Other Tax Claims**

Priority tax claims are unsecured claims asserted by federal and state governmental authorities for taxes specified in §507(a)(8) of the Bankruptcy Code, such as certain income taxes, property taxes, excise taxes, and employment and withholding taxes. These unsecured claims are given a statutory priority in right of payment.

**(c) Other Priority Claims**

These are claims entitled to priority pursuant to §507(a) of the Bankruptcy Code other than priority tax claims or administrative claims. Under the Plan or as soon thereafter as reasonably practical, after the latest of (1) the distribution date or (2) the date which the claim becomes an allowed claim, or (3) the date such claim becomes payable pursuant to any agreement between the Debtor and the holder of such claims, each other of an allowed other priority claim will receive in full satisfaction, settlement and release and discharge of and in exchange for such allowed claim either (1) cash equivalent to the unpaid portion of such allowed claim, or (2) such other treatment as to which the Debtor and such holder may agree. The Debtor agrees there are no other priority claims to be paid in this case.

**2. Treatment of Classified Claims and Interests Under the Plan**

**(a) Unimpaired Classes of Claims**

**(i) Secured Claim of Adams Bank & Trust.**

Class One consists of the secured claim of Adams Bank & Trust.

**(ii) Class Three – All customers who overpaid Happy Jack's.**

**(b) Impaired Claims and Interests**

**(i) Class Two – Vendors** who are currently, or who were as of the date of filing for bankruptcy doing business with Happy Jack's. Doing business is defined as those companies which supplied goods to Happy Jack's within one month prior to the bankruptcy filing.

- (ii) **Class Four – All prepaid propane customers**
- (iii) **Class Five – Pre-purchase fuel customers owed less than 3,000 gallons of fuel.**
- (iv) **Class Six – Pre-purchase fuel customers owed between 3,000 gallons of fuel and 7,000 gallons of fuel.**
- (v) **Class Seven – All pre-purchase fuel customers owed between 7,000, and 50,000 gallons of fuel.**
- (vi) **Class Eight – All unsecured creditors who are no longer doing business with Happy Jack’s.**
- (vii) **Class Nine - The Debtor and its equity security holders.**

The claims of general unsecured creditors consist primarily of the unsecured claims of trade creditors. The Debtor estimates that such claims will upon final allowance and determination, total approximately \$1.7 million, but that estimate is subject to change and should not be considered binding on the Debtor.

## **VIII. FEASIBILITY OF THE PLAN AND BEST INTERESTS OF THE CREDITORS**

### **A. FEASIBILITY OF THE PLAN**

In connection with confirmation of the Plan, the Bankruptcy Court will have to determine that the Plan is feasible pursuant to §1129(a)(11) of the Bankruptcy Code, which means that confirmation of the Plan is not likely to be followed by a liquidation or the need for further financial reorganization of the Debtor.

### **B. ACCEPTANCE OF THE PLAN**

As a condition to confirmation, the Bankruptcy Code requires that each class of impaired claims votes to accept the Plan except under certain circumstances, the Plan can be confirmed under §1129(b) of the Bankruptcy Code without the acceptance of all impaired classes. Section 1126(c) of the Bankruptcy Code defines acceptance of a Plan by a class of impaired claims as accepted by holders of at least two-thirds in dollar amount and more than one-half in numbers of claims in that class, but for that purpose, counts only those who actually vote to accept or reject the Plan.

Holders of claims who fail to vote are not counted as accepting or rejecting the Plan.



### **C. BEST INTEREST**

As noted above, even if the Plan is accepted by the holders of each class of claims and interests, the Bankruptcy Code requires the Bankruptcy Court to determine the Plan is in the best interest of all holders of claims and interests that are impaired by the Plan and that have not accepted the Plan. The best interest test as set forth in paragraph 1129(a)(7) of the Bankruptcy Code requires a Bankruptcy Court to find either that all members of the impaired class of claims or interests have accepted the Plan or the Plan will provide a member who has not accepted the Plan with a recovery of property of a value as of the Effective Date of the Plan that is not less than the amount that such holder would recover if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

To calculate the probable distribution to holders of each class of claims and interests if the Debtor were liquidated under Chapter 7, a Bankruptcy Court must first determine the aggregate dollar amount that would be generated by a Debtor's assets if its Chapter 11 case were converted to Chapter 7 of the Bankruptcy Code. This liquidation value would consist primarily of the proceeds from a forced sale of the Debtor's assets by a Chapter 7 trustee.

The amount of liquidation value available to unsecured creditors would be reduced by first the claims of secured creditors to the extent of the value of their collateral, and second by the costs and expenses of liquidation as well as by other administrative expenses and costs of both the Chapter 7 case and the Chapter 11 case. Costs of liquidation under Chapter 7 of the Bankruptcy Code would include the compensation of a trustee as well as of counsel and other professionals retained by the trustee, asset distribution disposition expenses, all unpaid expenses incurred by the Debtor in its Chapter 11 case (such as compensation of attorneys, financial advisors and accountants that are allowed in the Chapter 7 case), litigation costs and claims arising from the operation of the Debtor during the pendency of the Chapter 11 case. The liquidation itself would trigger certain priority payments that otherwise would be due in the ordinary course of business. Those priority claims would be paid in full from the liquidation proceeds before the balance, which would be made available to pay general claims or to make distribution in respect to equity interest. Once the Court ascertains the recoveries and liquidation of secured creditors and priority claimants, it must determine the probable distribution to general unsecured creditors and equity security holders from the remaining available proceeds in liquidation. If such probable distribution has a greater value than the distribution to be received by such creditors and equity security holders under the Plan, then the Plan is not in the best interest of creditors and equity security holders.

### **D. LIQUIDATION ANALYSIS**

In a liquidation, of all of the real and personal property owned by the Debtor, everything would be sold. The Debtor believes that the sale price would be likely, less a commission of approximately six to eight percent, depending on if selling real estate or

personal property, to be less than the amount owed to Adams Bank & Trust. In a foreclosure, that amount would be reduced by fifteen to twenty-five percent. In either event, the proceeds from the sale would not be sufficient to pay its unsecured creditor, Adams Bank & Trust the full amount of its debt and there would be nothing left for priority or unsecured creditors.

The Debtor has performed a financial analysis of a liquidation of all of the Debtor's assets which demonstrates that a liquidation will not generate enough to pay the creditors in full as this Plan will do over the course of its implementation. See the liquidation analysis attached hereto as Exhibit "B" and made a part hereof by this reference.

The Debtor believes that the only source of funds available for reorganization would be either Cash generated on an annual basis from the operation of the C-Store, or the operation of the Debtor's bulk fuel business.

#### **E. APPLICATION OF THE BEST INTEREST OF CREDITORS TEST TO THE LIQUIDATION ANALYSIS**

The Debtor believes that the financial disclosures and forecasts contained herein indicate that the recovery for the holders of Claims in impaired classes available in a Chapter 7 liquidation would not be sufficient to satisfy all of the claims however, under the Plan, Adams Bank & Trust will be paid in full and all creditors except those creditors no longer doing business with Happy Jacks will be paid the full amount of their claims plus interest, and all creditors no longer doing business with Happy Jacks will be paid in part. In the event of a liquidation, without a confirmed Plan, the secured creditor, Adams Bank & Trust would receive substantially less than the amount of its claim and the Debtor believes that priority and unsecured creditors would receive very little if anything. The Debtor believes that the "best interest" test of §1129 of the Bankruptcy Code can and will be satisfied by the Plan as proposed by the Debtor.

### **IX. ALTERNATIVES TO CONFIRMATION AND CONSUMATION OF THE PLAN**

The Debtor believes that the Plan affords holders of Classes One, Two, Three, Four, Five, Six, and Seven a potential for a full realization of the amount of the debt due and, therefore, it is in the best interest of such creditors, both secured and unsecured.

#### **A. LIQUIDATION UNDER CHAPTER 7**

If the Plan is not confirmed, the Chapter 11 case may be converted to a case under Chapter 7 of the Bankruptcy Code pursuant to which a trustee would be elected or appointed to liquidate the Debtor's assets for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. Based on the value and the amount of the debt, it is fairly certain how the proceeds of the

liquidation would be distributed to the respective holders of claims against or interest in the Debtor.

The Debtor believes that in liquidation under Chapter 7, the trustee may well abandon the real estate and personal property Adams Bank & Trust would then foreclose. In foreclosure the Debtor estimates that Adams Bank & Trust would not be paid in full by a third-party buyer, but that it would have the ability to credit bid up to the amount of its debt. In either event, unsecured creditors would receive nothing.

Even if the trustee did not abandon the collateral, additional administrative expenses involved in the appointment of a trustee and professionals to assist such trustees would cause a substantial diminution in the value of the Debtor's estate. The assets available for distribution to creditors would be reduced by some additional expenses and by claims, some of which would be entitled to priority which would arise by reason of the liquidation of and for the rejection of leases and other executory contracts in connection with the cessation of operation and the failure to realize the greater going concern value of the Debtor's assets.

Based on the liquidation analysis as described above, the Debtor believes that secured creditors would receive substantially less in the event of liquidation and unsecured creditors would receive nothing.

The liquidation analysis can be found at Exhibit "B" attached hereto and made a part hereof by this reference.

### **C. LIQUIDATION UNDER CHAPTER 11**

The Debtor is proposing a Plan that is the antithesis of a Liquidation Plan under the provisions of Chapter 11 of the Bankruptcy Code. The liquidation under Chapter 11 would allow the Debtor's assets to be sold in an orderly fashion by the principal secured lender, Adams Bank & Trust. The Debtor believes that a conveyance of the real and personal property by Adams Bank & Trust the secured creditor, would not be in the best interest of creditors since Adams Bank & Trust would not receive for the land and personal property enough to allow the unsecured creditors to receive any benefits under the Plan and the conveyance of the property by Adams Bank & Trust would not result in a payment on the unsecured claims.

The liquidation analysis can be found at Exhibit "B" attached hereto and made a part hereof by this reference.

**X. FEDERAL INCOME TAX CONSEQUENCES  
TO THE DEBTOR**

**A. CANCELLATION OF INDEBTEDNESS INCOME**

Because the Debtor will be a debtor in a bankruptcy case at the time it realizes cancellation of debt income, it will not be required to include any such cancellation of debt income in its gross income but rather will be required to reduce certain of its respective tax attributes by the amount of the calculation of debt income so excluded. Under the general rules of the Internal Revenue Code §1108, the required attribute reduction will be first applied to reduce the Net Operating Losses (NOL's) and NOL carryforwards to the extent of such NOL's and carryforwards and then to certain other tax attributes of the Debtor in the order prescribed by the Internal Revenue Code.

**B. NET OPERATING LOSSES AND OTHER ATTRIBUTES**

The Debtor has NOL carryforwards. Current year's NOL's use of general business alternative minimum tax and foreign tax credit carryforwards and NOL carryforwards may be reduced or limited by cancellation of indebtedness income to be realized upon implementation of the Plan.

**XI. SOLICITATION VOTING PROCEDURES**

The Bankruptcy Court may confirm the Plan only if it determines that the Plan complies with the technical requirements of Chapter 11 of the Bankruptcy Code and that the disclosures by the Debtor concerning the Plan have been adequate and have included information concerning all payments made or to be made in connection with the Plan in the Chapter 11 case. In addition, the Bankruptcy Court must determine that the Plan has been proposed in good faith and not by any means forbidden by law and under Rule 3020(b)(2) of the Bankruptcy Rules, it may do so without receiving evidence, if no objection is timely filed.

In particular the Bankruptcy Code requires the Bankruptcy Court to find, among other things, that (1), the Plan has been accepted by the requisite votes of the classes of impaired claims unless approval will be sought under 1129(b) of the Bankruptcy Code, despite the dissent of one or more classes which will be the case under the Plan; and (2) the Plan is feasible, which means that there is a reasonable probability that confirmation of the Plan will not be followed by liquidation or the need for further financial reorganization; and (3) the Plan is in the "best interest" of all holders of claims and interests, which means that such holders will receive at least as much under the Plan as they would receive in a liquidation under Chapter 7 of the Bankruptcy Code.

The Bankruptcy Court must find that all conditions mentioned above are met before it can confirm the Plan. Thus, even if all classes of impaired claims and interests except the Plan by the requisite votes, the Bankruptcy Court must make an independent finding

that the Plan conforms to the requirements of the Bankruptcy Code and that the Plan is feasible and in the best interest of the holders of claims against and interests in the Debtor.

## **XII. PARTIES IN INTEREST**

### **A. PARTIES IN INTEREST**

Under § 1124 of the Bankruptcy Code, a class of Claims or interests is deemed to be impaired under the Plan unless (1) the Plan leaves all of 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 cures all existing defaults other than defaults resulting from the occurrence of the events of bankruptcy and reinstates the maturity of such claim or interest as it existed before the default.

In general, the holder of a claim or interest may vote to accept or to reject a plan if (1) the claim or interest is allowed, which means generally that no party in interest has objected to such claim or interest; and (2) the claim or interest is impaired by the Plan.

If the holder of an impaired claim or interest will not receive or retain any distribution under the Plan in respect to such claim or interest, the Bankruptcy Code deems such holder to have rejected the Plan and accordingly holders of such claims and interests do not actually vote on the Plan.

If the claim or interest is not impaired, the Bankruptcy Code deems that the holder of such claim or interest to have accepted the Plan and accordingly, holders of such claims and interests are not entitled to vote on the Plan.

The holder of a claim against the Debtor that is impaired under the Plan is entitled to vote to accept or reject the Plan if (1) the Plan provides a distribution in respect to such claim; and (2) either the claim has been scheduled by the Debtor and such claim is not scheduled at zero or as disputed, contingent or unliquidated, or it has filed a proof of claim on or before the bar date applicable to such holder pursuant to §§502(a) and 1126(a) of the Bankruptcy Code and the Bankruptcy Rules 3003 and 3018.

Any claim as to which an objection has been timely filed and has not been withdrawn or dismissed or denied by final order is not entitled to vote unless the Bankruptcy Court, pursuant to Federal Rule of Bankruptcy Procedure 3018(a), upon application of the holder of the claim with respect to which there has been objection, temporarily allows the claim in an amount that the Bankruptcy Court deems proper for the purpose of accepting or rejecting the Plan.

A vote may be disregarded if the Bankruptcy Court determines, pursuant to §1126(e) of the Bankruptcy Code that it was not solicited or procured in good faith or in

accordance with the provisions of the Bankruptcy Code. The voting procedures order also sets forth assumptions and procedures for tabulating ballots that are not completed fully or correctly.

**B. CLASSES IMPAIRED UNDER THE PLAN**

Class One is unimpaired and thus is deemed to have accepted the Plan and not entitled to vote to accept or reject the Plan, all other Classes are unimpaired.

**C. WAIVERS OF DEFECTS IRREGULARITIES AND SO FORTH**

Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility including time of receipt, acceptance and revocation or withdrawal of ballots will be determined by the Debtor in accordance with the voting procedures in its sole discretion which determination will be final and binding. The Debtor also reserves the right to reject any and all ballots not in proper form, the acceptance of which would, in the opinion of the Debtor or its counsel, be unlawful. The Debtor further reserves the right to waive any defense or irregularities or conditions of delivery as to any particular ballot.

**D. WITHDRAWAL OF BALLOTS; REVOCATION**

Any party who has delivered a valid ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Debtor's attorney, William L. Biggs or Frederick D. Stehlik of the firm of Gross & Welch, P.C., L.L.O., any time prior to the voting deadline. A notice of withdrawal to be valid must (1) contain the description of the claim to which it relates and the aggregate principal amount represented by such claim or claims; (2) be signed by the withdrawing party in the same manner as the ballot being withdrawn; (3) contain a certification that the withdrawing party owns the claim and possesses the right to withdraw the vote sought to be withdrawn; and (4) be received by either William L. Biggs or Frederick D. Stehlik in a timely manner at the address set forth below. The Debtor expressly reserves the absolute right to contest the validity of any such withdrawals of ballots.

Unless otherwise directed by the Bankruptcy Court, a purported notice of withdrawal of ballots which is not received in a timely manner will not be effective to withdraw a previously cast ballot.

Any party who has previously submitted a properly completed ballot may revoke such ballot and change his, her or its vote by submitting, prior to the voting deadline, a subsequent properly completed ballot for acceptance or rejection of the Plan. In the case where more than one timely properly completed ballot is received, only the ballot which bears the latest date will be counted for purposes of determining whether the requisite acceptances had been received.

DATED this 17th day of April, 2017.

HAPPY JACK'S PETROLEUM, INC.,

**/s/ Wade B. Hill**

Wade B. Hill  
Authorized Representative

And

**/s/ William L. Biggs**

William L. Biggs, #10317  
Frederick D. Stehlik, #15481  
GROSS & WELCH, PC, LLO  
2120 South 72<sup>nd</sup> Street, Suite 1500  
Omaha, NE 68124  
(402) 392-1500  
(402) 392-8101 (Fax)

13158-1/#6BA041902

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN RE:	)	CASE NO. BK16-41395
	)	CHAPTER 11
HAPPY JACK'S PETROLEUM, INC.	)	
	)	
Debtor.	)	

**DEBTOR'S**  
**PLAN OF REORGANIZATION**

William L. Biggs, #10317  
 Frederick D. Stehlik, #15481  
 Zachary Lutz-Priefert, #25902  
 GROSS & WELCH, P.C., L.L.O.  
 2120 South 72<sup>nd</sup> Street, Suite 1500  
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 (402) 392-1500  
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[fstehlik@grosswelch.com](mailto:fstehlik@grosswelch.com)

Attorneys for Debtor and Debtor in Possession

DATED: April 17, 2017





COMES NOW Happy Jack's Petroleum, Inc., the above-named Debtor and Debtor in Possession ("Debtor" or "Happy Jack's") and hereby proposes the following Plan of Reorganization ("Plan") pursuant to §1121(a) of Chapter 11 of the United States Bankruptcy Code.

## ARTICLE I DEFINITIONS

Unless the context clearly requires otherwise (i) all capitalized terms used herein and not otherwise defined shall have the meanings given to them in this Article; (ii) any of the terms used in the Plan and defined in the Bankruptcy Code shall have the meanings given to them in the Bankruptcy Code; (iii) the singular shall include the plural and vice versa; and (iv) the words "herein" "hereof" and "hereto", "hereunder" and others of similar inference shall refer to the Plan as a whole and not to any particular section, subsection or clause contained in the Plan. All exhibits to the Plan are incorporated herein by reference and made a part hereof.

1.1 **"Administrative Expense Claim"** shall mean any claim allowable under §503(b) of the Bankruptcy Code and entitled to priority pursuant to §507(a)(1) of the Bankruptcy Code including, without limitation, (a) any actual and necessary expenses of preserving the estate of the Debtor; any actual and necessary expenses of operating the business of the Debtor and any indebtedness or obligations incurred or assumed by the Debtor in connection with the conduct of the Debtor's business for the acquisition, lease or other disposition of the Debtor's property or for the procurement by the Debtor of services relating to the administration of the Debtor's business, whether arising before or after the Effective Date as allowed by the Bankruptcy Court in the Chapter 11 case; (b) any allowances of compensation and reimbursement of expenses, whether arising before or after the Effective Date as allowed by the Bankruptcy Court in the Chapter 11 case and any fees or charges assessed against the Debtor's estate under Chapter 123 of Title 28 of the United States Code.

1.2 **"Allowed Claim"** shall mean (a) any Claim against Debtor or portion thereof, proof of which was filed on or before the Claims Bar Date, or on or before such date as may be specifically authorized for such Proof of Claim by Final Order of the Bankruptcy Court, or, if no Proof of Claim is filed, which was listed by Debtor in its Schedules as liquidated in amount and not disputed or contingent and, in either case, as to which no objection to the allowance thereof has been interposed within the applicable period of limitation fixed in the Plan, the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules or a Final Order of the Bankruptcy Court; or (b) any Claim against Debtor or portion thereof as to which an objection has been interposed and such Claim has been allowed in whole or in part by a Final Order (including an order confirming the Plan) to the extent allowed by such Final Order. Unless otherwise specified in the Plan or in the Final Order of the Bankruptcy Court allowing such Claim,

"Allowed Claim" shall not include interest on the amount of such Claim from and after the Petition Date.

1.3 **"Allowed Secured Claim"** shall mean the allowed claim of a creditor which has or claims a lien or security interest in assets of the Debtor or, to the extent such claim is finally allowed in whole or in part by this Plan, the Confirmation Order, or such other final order as the Bankruptcy Court might enter.

1.4 **"Assets"** shall mean all of the property of Debtor's estate as defined in § 541 of the Bankruptcy Code.

1.5 **"Ballot"** means each of the forms that will be distributed with the Disclosure Statement to holders of Claims and holders of Interests in Classes that are impaired under the Plan and entitled to vote in connection with the solicitation of acceptances of the Plan.

1.6 **"Bankruptcy Code"** shall mean the Bankruptcy Reform Act of 1978, as amended and codified in Title 11 of the United States Code, as applicable to this Chapter 11 Case.

1.7 **"Bankruptcy Court"** shall mean the United States Bankruptcy Court for the District of Nebraska having jurisdiction over the Chapter 11 Case.

1.8 **"Bankruptcy Rules"** shall mean the Rules of Bankruptcy Procedure, as the same from time to time may be amended.

1.9 **"Business Day"** shall mean a day other than a Saturday, a Sunday or any other day on which commercial banks in Omaha, Nebraska are required or authorized by law to close.

1.10 **"Cash"** shall mean the lawful currency of the United States of America.

1.11 **"Causes of Action"** shall mean all causes of action or rights to recovery of Debtor, whether existing as of the Petition Date or thereafter arising, including, but not limited to Causes of Action arising under §§ 544, 545, 547, 548, 553 or 724(a) of the Bankruptcy Code.

1.12 **"Cause of Action Recoveries"** shall mean the proceeds recovered from Causes of Action.

1.13 **"Chapter 11 Case"** shall mean Debtor's case under Chapter 11 of the Bankruptcy Code.

1.14 **"Claim"** shall mean any right to payment from Debtor, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, known or

unknown; or any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment by or from Debtor, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, all as set forth in § 101(5) of the Bankruptcy Code.

1.15 **"Claims Bar Date"** shall mean February 1, 2017, the bar date which was designated by the Bankruptcy Court as the last date for filing proofs of claim against Debtor.

1.16 **"Confirmation Date"** shall mean the date on which the Confirmation Order is docketed by the Clerk of the Bankruptcy Court.

1.17 **"Confirmation Order"** shall mean the order of the Bankruptcy Court confirming this Plan pursuant to § 1129 of the Bankruptcy Code.

1.18 **"Creditor"** shall mean any Person that has a Claim.

1.19 **"Disclosure Hearing"** shall mean the hearing held pursuant to § 1125 of the Bankruptcy Code concerning the approval of the Disclosure Statement relating to this Plan.

1.20 **"Disclosure Statement(s)"** means the written Disclosure Statement(s) that relate to the Plan, as approved by the Bankruptcy Court pursuant to § 1125 of the Bankruptcy Code and Bankruptcy Rule 3017, as such Disclosure Statement(s) may be amended, modified, or supplemented from time to time.

1.21 **"Disputed Claim"** shall mean, at any time, that portion of a Claim asserted against Debtor that is (a) the subject of a timely objection interposed by Debtor or party in interest in the Chapter 11 Case, if at such time such objection remains unresolved, or (b) prior to the time that an objection has been or may be timely filed, in excess of the amount of the Claim scheduled by Debtor as other than disputed, contingent or unliquidated; provided, however, that the Bankruptcy Court may estimate a Disputed Claim for purposes of allowance pursuant to § 502(c) of the Bankruptcy Code. In the event there is a dispute as to classification of a Claim, it shall be considered a Disputed Claim in its entirety. The portion of a Claim that is not disputed by Debtor shall be deemed to be an Allowed Claim.

1.22 **"Effective Date"** shall mean 11 Calendar Days after the Confirmation Order unless consummation of the Plan has been stayed.

1.23 **"Face Amount"** shall mean, at any time, with respect to a particular Claim: (a) if the holder of such Claim has not filed a Proof of Claim within the applicable period of limitation fixed by the Bankruptcy Court pursuant to the Bankruptcy Code, the Bankruptcy Rules or other applicable law, the amount of such Claim that is listed in the Schedules as non-contingent, undisputed and liquidated; (b) if the holder of such Claim

has filed a Proof of Claim within the applicable period of limitation fixed by the Bankruptcy Court pursuant to the Bankruptcy Code, the Bankruptcy Rules or other applicable law, and such Claim has not become an Allowed Claim or been estimated by Final Order of the Bankruptcy Court, the amount stated in such Proof of Claim; or (c) in all other cases, Zero Dollars (\$0.00) or such amount as shall be fixed or estimated by a Final Order of the Bankruptcy Court.

1.24 **"Final Order"** shall mean an order as to which the time to appeal or to seek review or rehearing has expired and as to which no appeal or any extension thereof or other proceedings for review or rehearing shall then be pending or, in the event that an appeal, review or rehearing has been sought, such appeal or other proceeding has been withdrawn with prejudice or dismissed with prejudice or such order shall have been affirmed by the highest court to which such order was appealed and the time to appeal or any extension thereof or to seek review of such appellate order has expired; provided, however, that no order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure may be filed with respect to such order.

1.25 **"Local Bankruptcy Rules"** shall mean the Local Bankruptcy Rules of the Bankruptcy Court, as applicable to this Chapter 11 Case.

1.26 **"Person"** shall mean an individual, a corporation, a debtor, an association, a joint stock company, an estate, a trust, any incorporated organization, a government or any political subdivision thereof or other entity.

1.27 **"Petition Date"** shall mean September 16, 2016, the date upon which Debtor filed its Petition in the Chapter 11 Case.

1.28 **"Plan"** shall mean this Plan of Reorganization and any exhibits or duly authorized amendments hereto, as the same may be amended from time to time.

1.29 **"Priority Claim"** shall mean that portion of an Allowed Claim, other than an Administrative Expense Claim or a Tax Claim, that is entitled to priority in accordance with § 507(a) of the Bankruptcy Code, if any.

1.30 **"Pro Rata"** shall mean, as of any date of determination, with respect to the share of any Claim within any class of claims, a fraction (expressed as a percentage) having as its numerator the allowed amount of such Claim and having as its denominator the aggregate Face Amounts as of such date of all Allowed Claims and Disputed Claims in such Class.

1.31 **"Schedules"** shall mean the Schedules and Statement of Financial Affairs filed by Debtor with the Bankruptcy Court, as amended on or before the Confirmation Date, listing the liabilities and assets of Debtor.

1.32 **"Secured Claim"** shall mean a Claim against Debtor to the extent of the

value, of any interest in Debtor's property securing such Claim.

1.33 **"Tax Claims"** shall mean any Claim entitled to priority under § 507(a)(8) of the Bankruptcy Code, but only to the extent such Claim is entitled to such priority.

1.34 **"Unsecured Claim"** shall mean any Claim other than a Secured Claim, an Administrative Expense Claim, Priority Claim, or ownership interest in the Debtor.

## **ARTICLE II DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS**

All Claims against the Debtor of whatever nature, whether or not scheduled, liquidated or unliquidated, absolutely or contingent, including all Claims arising from the rejection of executory contracts and all interests arising from the ownership of any equity interest in the debtor shall be bound by the provisions of this Plan and are hereby classified as set forth below.

### **2.1 Unclassified Claims Against the Debtor**

- (a) Administrative Expense Claims;
- (b) Priority Tax Claims.

### **2.2 Classified Claims Against and Equity Interests In the Debtor**

- (a) Class One – Secured Claim of Adams Bank & Trust.
- (b) Class Two – Vendors who are currently, or who were as of the date of filing for bankruptcy doing business with Happy Jack's.
- (c) Class Three – All customers who overpaid Happy Jack's.
- (d) Class Four – All prepaid propane customers.
- (e) Class Five – Pre-purchase fuel customers owed less than 3,000 gallons of fuel.
- (f) Class Six – Pre-purchase fuel customers owed between 3,000 gallons of fuel and 7,000 gallons of fuel.
- (g) Class Seven – All pre-purchase fuel customers owed between 7,000, and 50,000 gallons of fuel.
- (h) Class Eight – All unsecured creditors who are no longer doing business with Happy Jack's.

- (i) Class Nine - The Debtor and its equity security holders.

**ARTICLE III  
IDENTIFICATION OF IMPAIRED CLASSES AND EQUITY INTERESTS**

3.1 **Unclassified Claims.** Administrative Expense Claims and Priority Claims, including any priority tax claims, are not classified under the Plan.

3.2 **Unimpaired Classes of Claims and Equity Interests.** Classes One and Three are unimpaired classes under the Plan.

3.3 **Impaired Classes of Claims and Equity Interests.** All other classes are impaired under the Plan.

**ARTICLE IV  
PROVISIONS FOR PAYMENT OF ALLOWED ADMINISTRATIVE  
EXPENSE AND PRIORITY CLAIMS**

In full satisfaction and discharge of all of their respective claims against the Debtor, the holders of allowed administrative expense claims shall have such claims paid in the following manner.

4.1 **Ordinary Course Payments.** All Administrative Expense Claims arising from trade and service debts and obligations incurred in the ordinary course of business by the Debtor during this Chapter 11 Case between the Filing Date and the Effective Date shall be paid in full by the Debtor in accordance with their terms as they come due in the ordinary course of business.

4.2 **Other Administrative Expenses.** Unless otherwise agreed by the holder of an Administrative Expense Claim and the Debtor, each holder of an Administrative Expense Claim (including, without limitation, attorneys, accountants, appraisers, printers and trustee's fees, if any) that have been allowed by a final order of the Court pursuant to §503(a) shall be paid in respect to such Administrative Expense Claim, in Cash by the Debtor on the Effective Date, or in the case of an Administrative Expense Claim which has not been allowed, or on or before the Effective Date, promptly upon the allowance thereof subsequent to the Effective Date. Professional fee expenses for services rendered to the Debtor after the Effective Date shall be paid monthly by the Debtor in the ordinary course of business, subject to the terms of the motion to approve procedures for interim compensation and reimbursement of professional fees and the order approving the same.

4.3 **Priority Tax Claims.** These claims are unsecured tax claims asserted by federal, state and local government authorities for taxes specified in §507(a)(8) of the Bankruptcy Code such as certain income taxes, property taxes and excise taxes.

These unsecured claims, if any exist, are given a statutory priority in right of payment and shall be paid in Cash on the Effective Date unless otherwise agreed or shall be paid over a period of time pursuant to Section 1129(a)(9)(C) of the Bankruptcy Code.

4.4 **Other Priority Claims.** These are claims entitled to priority pursuant to §507(a) of the Bankruptcy Code other than priority tax claims or administrative claims. Under the Plan, or as soon thereafter as reasonably practical after the latest of (a) the Effective Date or (b) the date such claim becomes an allowed claim or (c) the date such claim becomes payable pursuant to any agreement between the Debtor and the holder of such claim, each holder of an allowed other priority Claim will receive in full satisfaction, settlement, release and discharge of and in exchange for such claim (i) Cash in the amount of the unpaid portion of such allowed claim; or (ii) such other treatment as to which the Debtor and such holder have agreed or will agree in writing.

## ARTICLE V PROVISIONS FOR TREATMENT OF CLAIMS AND EQUITY INTERESTS IN THE DEBTOR

In full satisfaction and discharge of all their respective claims against and equity interests in the Debtor, the Debtor's creditors shall be treated as follows:

5.1 **Unimpaired Classes of Claims.** Class One and Three are unimpaired classes in this Plan, and will be paid in accordance with the terms of the debt or obligation.

5.2 **Impaired Claims and Interests.**

**Class Two – Vendors who are currently, or who were as of the date of filing for bankruptcy doing business with Happy Jack's:** As of the date of filing, Happy Jack's had two (2) outstanding vendors owed a total of \$27,892.92. By December 20, 2017, Happy Jack's shall pay all Class Two creditors in full.

**Class Four – All prepaid propane customers:** As of the date of filing, Happy Jack's had seventy-two (72) propane customers who had prepaid or overpaid for propane who altogether were owed a total of 61,882 gallons of propane. By December 20, 2017, Happy Jack's will have provided propane to all Class Four creditors in full.

**Class Five – Pre-purchase Fuel customers owed less than 3,000 gallons of fuel at the time of filing:** As of the date of filing, Happy Jack's had fifteen (15) outstanding contracts with customers who were owed less than 3,000 gallons of fuel. Happy Jack's shall provide fuel for these customers in full no later than December 20, 2018.

**Class Six – Pre-purchase Fuel customers owed between 3,000 gallons and 7,000 gallons of fuel at the time of filing:** As of the date of filing, Happy Jack's had seven (7) pre-purchase fuel customers owed between 3,000 gallons and 7,000 gallons of fuel. Happy Jack's shall begin to satisfy these debts once all Class Five debts are satisfied. No later than December 20, 2019, Happy Jack's will have fulfilled all pre-purchase fuel contracts in Class Six.

**Class Seven – Pre-purchase Fuel customers owed more than 7,000 gallons of fuel at the time of filing:** As of the date of filing, Happy Jack's had fourteen (14) pre-purchase fuel customers owed more than 7,000 gallons of fuel. Happy Jack's will be providing fuel under these contracts to satisfy this debt. Once all Class Six claims have been fulfilled, which will occur no later than December 20, 2019, Happy Jack's will begin to satisfy the Class Seven claims and will completely satisfy the claims by December 20, 2024.

**Class Eight – All unsecured creditors who are no longer doing business with Happy Jack's:** As of the date of filing, Happy Jack's had one creditor who was owed in excess of \$100,000.00. This creditor was Western Terminal Transportation, LLC. After all the vendors owed less than \$20,000.00, all prepaid fuel and propane contracts have been satisfied, Happy Jack's will make yearly payments of \$50,000.00 to the Class Eight member through and until December 20, 2026.

## **ARTICLE VI MEANS FOR IMPLEMENTATION OF THE PLAN**

6.1 **Continued Existence.** Happy Jack's shall continue to exist after the Effective Date in accordance with applicable law in the State of Nebraska, the jurisdiction in which it was organized and pursuant to its Articles of Incorporation and Operating Agreement then in effect, except to the extent that such Operating Agreement is amended by this Plan.

6.2 **Debtor's Post-Confirmation Operations.** Happy Jack's plans to continue to operate and manage its business operations as it has done so previously, however, Happy Jack's will also begin to consolidate operations and shall enter into written leases and contracts with its members for various property owned by Happy Jack's shareholders which are utilized by Happy Jack's.

6.3 **Disputed Claims.** Objections to Claims that have not previously been allowed shall be filed with the Bankruptcy Court and served upon each holder of a disputed Claim at any time prior to the 125<sup>th</sup> day after the Confirmation Date. Unless otherwise ordered by the Bankruptcy Court, the Debtor shall litigate to judgment or



settle or withdraw objections to disputed Claims. Nothing herein shall preclude a creditor from voting for or against the Plan prior to final allowance of its Claim.

6.4 **Contingent Claims.** For the purpose of the allocations and distributions to holders of allowed Unsecured Claims, the Bankruptcy Court shall, upon the motion of the Debtor, fix or liquidate the amount of any contingent Claim pursuant to §502 of the Bankruptcy Code, in which event, the amount so fixed shall be deemed the amount of such contingent Claim. At this time, the Debtor is unaware of any contingent Claims by creditors with Claims against the Debtor.

6.5 **Cause of Action Recoveries.** Except as otherwise ordered by the Court, all Causes of Action shall be retained by the Debtor and shall be brought, settled and enforced if at all by the Debtor and the proceeds from such Causes of Action net of costs and expenses, shall become property of the Debtor. Nothing herein shall require the Debtor to bring any cause of action against any Person or Creditor and the Debtor shall only bring such cause of action as it in its sole discretion shall determine.

6.6 **Interest on Claims.** Except as specifically provided herein with regard to specified Claim treatment, post-petition interest shall not accrue or be paid on Claims and no holder of a Claim shall be entitled to interest accruing after the petition date on any Claim. Interest shall not accrue or be paid on any disputed Claim in respect to the period from and after the Petition Date to the date a final distribution is made thereon if and after such disputed claim becomes an Allowed Claim.

## **ARTICLE VII ACCEPTANCE OR REJECTION OF THE PLAN**

7.1 **Classes Entitled to Vote.** Classes Two, Four, Five, Six, Seven, and Eight are impaired under the Plan. All impaired classes shall be entitled to vote to accept or reject the Plan.

7.2 **Non-consensus Confirmation.** Notwithstanding the actual rejection by any class or classes, the Debtor reserves the right to request the Bankruptcy Court to confirm the Plan in accordance with §1129(b) of the Bankruptcy Code.

## **ARTICLE VIII ASSUMPTION OR REJECTION OF EXECUTORY CONTRACTS**

### **8.1 Assumption of Leases and Contracts.**

- (a) The Debtor has currently entered into a lease agreement with Ascentium Capital for the lease of software and hardware for a computer system associated with the maintenance of the Debtor's business. This lease is currently in effect, however, has less than a year remaining on it. It is

anticipated that either this lease will be renewed or a similar lease will be entered into with Ascentium Capital or a different company.

- (b) Debtor has an unwritten lease with Integrated Business Works for the land upon which the Debtor's physical convenience store is located. Debtor will continue to operate under this lease and will enter into a new written lease as part of its Chapter 11 Reorganization.
- (c) Debtor has an informal lease with Jack Hill to lease two bulk plants which the Debtor uses as part of its ongoing business operations. Debtor and Jack Hill will enter into a written lease agreement as part of Debtor's Chapter 11 Reorganization.
- (d) Debtor informally leases trucks from Jack Hill. Debtor will enter into a written lease concerning these trucks as part of Debtor's Chapter 11 Reorganization.
- (e) One of Debtor's equity interest holders, Wade B. Hill, is a lessor under a lease with NKC Railnet. The Debtor pays the obligations of Wade B. Hill and intends to continue to pay said obligations.

8.2 **Retention of the Right to Assume or Reject.** Pursuant to the terms of the Plan, the Debtor's business shall continue following the confirmation of the Plan. The Debtor shall retain the right to assume, assign or reject any pre-petition executory contracts or leases that have not been expressly assumed or rejected prior to the Confirmation Date. Any executory contracts or leases that have not been expressly assumed or rejected prior to sixty days from and after the Effective Date shall be deemed rejected on the 61<sup>st</sup> day after the Effective Date unless such date is extended by order of the Bankruptcy Court.

## ARTICLE IX CONDITIONS PRECEDENT

9.1 **Conditions Precedent to Plan Consummation.** Unless waived by the Debtor, it shall be a condition precedent to the consummation of the Plan that on or before the Effective Date:

- (a) **Confirmation Order.** The Confirmation Order shall have been entered by the Court and shall have become a Final Order. The Confirmation Order shall approve \_\_\_\_\_
- (b) **Confirmation.** No requests for revocation of the Confirmation Order under §1144 of the Bankruptcy Code shall have been made or, if made, shall remain pending; and

- (c) **No Pending Actions.** No action shall be pending that would materially alter any of the provisions of the Plan.

**ARTICLE X  
EFFECTS OF CONFIRMATION**

10.1 **Retention of Jurisdiction.** The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of and related to this Chapter 11 case and the Plan for the following purposes:

- (a) To hear and determine any and all pending and future objections to the allowance of Claims and equity interests, including, without limitation, objections to tax claims related to events or transactions occurring on or before the Effective Date.
- (b) To hear and determine any actions pursuant to §§522, 541, 543, 547, 548, 549, 550 or 553 of the Bankruptcy Code, it being expressly stated herein that if it is the Debtor's intention to fully pursue any such causes of action after the Confirmation Date.
- (c) To consider and act on the compromise and settlement of any claim against or cause of action on behalf of the Debtor's estate.
- (d) To hear and determine all pending or future controversies, suits and disputes that may arise in connection with the interpretation, enforcement or consummation of the Plan.
- (e) To hear and determine any and all applications for the allowance of compensation and reimbursement of expenses rendered or incurred on or before the Confirmation Date.
- (f) To hear and determine any and all pending and future applications for approval of the sale of the assets or any portion thereof free and clear of all liens pursuant to §363 of the Bankruptcy Code.
- (g) To hear and determine any and all pending or future applications for rejection, assumption or assignment of executory contracts and unexpired leases to which the Debtor is a party or with respect to which it may be liable, and to hear and determine and, if need be, to estimate or liquidate any and all claims arising therefrom or from the rejection of executory contracts or unexpired leases pursuant to the Plan.
- (h) To consider any modifications of the Plan.

- (i) To correct any defect, cure any omission or reconcile any inconsistency in the Plan, including any exhibit thereto or in any order of the Bankruptcy Court, including the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan and to implement and effectuate the Plan.
- (j) To determine such other matters as may be provided for in the Confirmation Order or other orders of the Bankruptcy Court or as may, from time to time, be authorized under the provisions of the Bankruptcy Code or any other applicable law;
- (k) To enforce all orders, judgments, injunctions and rulings entered into in connection with the Chapter 11 case and to issue such orders as may be necessary or appropriate in aid of confirmation and to facilitate confirmation of the Plan; and
- (l) To enter an order closing this Chapter 11 case.
- (m) To determine any and all applications, adversary proceedings and contested and litigated matters pending on the Effective Date or thereafter instituted by or on behalf of the Debtor or any other party in interest after the Effective Date.

## 10.2 Injunction.

(a) No holder of a Claim against, or interest in, the Debtor may, on account of such Claim or interest, seek or receive any payment or other distribution from, or seek recourse against, the Debtor, or the Debtor's property, or guarantors of the Debtor, except as expressly provided in the Plan. The Confirmation Order shall provide, among other things, that no holder of a Claim against, or interest in, the Debtor may, on account of such Claim or interest, seek or receive any payment or other distribution from, or seek recourse against, the Debtor, or guarantors and/or members of the Debtor LLC. All Persons who have held, hold, or may hold Claims against or interests in the Debtor are permanently enjoined from taking any of the following actions against the Debtor, or any of their property on account of such Claims or interests, or against any guarantors of the Debtor or members of the Debtor LLC: (i) commencing or continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any lien or encumbrance; and (iv) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan.

(b) **Exculpation and Limitation of Liability.** Except as otherwise specifically provided in the Plan, each of the Debtor, the Debtor's Professionals or the Debtor's Members or Guarantors shall be released and exculpated from any Claims related to any act or omission relating to the Chapter 11 case or the Plan; provided, however, that claims based on acts or omissions that are determined by a Final Order

to be the result of gross negligence or willful misconduct shall not be released and/or exculpated.

(c) **Injunction.** Except as otherwise specifically provided herein, on the Effective Date, the Confirmation Order shall constitute an injunction permanently enjoining any Person that has held, currently holds or may hold a Claim, demand, debt, right, cause of action or liability that is released pursuant to the Plan from enforcing or attempting to enforce any such Claim, demand, debt, right, cause of action or liability against the Debtor or the guarantors or members of the Debtor, or any property, including the Property.

(d) **Sale of Property Free and Clear.** As of the Effective Date, the transfer of the Property for the purpose of sale, will be a legal, valid and effective transfer of the Property, and will vest the buyers with all right, title and interest in and to the Property, free and clear of all liens, claims, interests and encumbrances, including successor liability claims provided the funds received are paid to the Secured Creditor pursuant to the existing security interest.

## **ARTICLE XI MISCELLANEOUS**

11.1 **Headings.** Headings are utilized in the Plan for the convenience of and reference only and shall not constitute a part of the Plan for any other purpose.

11.2 **Amendment of the Plan.** Before the entry of the Confirmation Order this Plan may be amended by the Debtor. After the entry of the Confirmation Order the Debtor may, upon order of the Bankruptcy Court, amend or modify the Plan in accordance with §1127(b) or the Bankruptcy Code or to remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purposes and intent hereof.

11.3 **Professional Fee Claims.** All final requests for compensation or reimbursement of professional fees for services rendered to the Debtor prior to the Effective Date must be filed and served on the Debtor and its counsel no later than thirty days after the Effective Date unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be filed and served on the Debtor and its counsel and the requesting professional no later than thirty days after filing of the applicable request.

11.4 **Retention of Records.** Debtor shall retain its records in an orderly fashion regarding the operation of its business affairs subject to applicable law with regard to records retention.

11.5 **Payment Dates.** Whenever any payment to be made under the Plan is due on a day other than a Business Day, such payment will instead be made without interest for such delay on the next business day.

11.6 **Governing Law.** Except to the extent the Bankruptcy Code or other federal law is applicable, the rights, duties and obligations arising under the Plan shall be governed by and construed and enforced in accordance with the laws of the State of Nebraska.

11.7 **Severability.** In the event that any provision of the Plan is determined to be unenforceable following the Effective Date, then such provision shall be severable from the Plan and shall in no way limit or affect the enforceability and operative effect of any and all provisions hereof.

11.8 **Calculation of Days.** Any calculation of days shall exclude the first date of such period, shall include the last date and, in the event the last date is not a business day, shall include the first next business day.

11.9 **Courts of Competent Jurisdiction.** If the Bankruptcy Court abstains from exercising or declining to exercise jurisdiction or are otherwise without jurisdiction over any matter arising out of the Plan, such abstention refusal shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other Court having competent jurisdiction with respect to such matters.

11.10 **Successors and Assigns.** The rights, duties and obligations of any person named or referred to in this Plan shall be binding upon and shall inure to the benefit of the successors and assigns of such person.

11.11 **No Admissions.** Until the Effective Date, nothing contained in the Plan or Disclosure Statement shall be deemed an admission by any Person with respect to any matter set forth therein.

## **ARTICLE XII NOTICES**

12.1 Except as otherwise provided herein, all notices required to be made in or under the Plan shall be in writing and shall be mailed by registered or certified mail, return receipt requested.

(a) If to the Debtor, then to

William L. Biggs  
Gross & Welch, P.C., L.L.O.  
1500 Omaha Tower  
2120 South 72<sup>nd</sup> Street  
Omaha, NE 68124  
(402) 392-1500

(b) If to a creditor or holder of an equity interest, at the address set forth in the Debtor's schedules or on such creditor's proof of claim.

12.2 Any person may change the address at which he is to receive notices for the purpose of the Plan by sending written notice pursuant to this provision to the person to be in charge with knowledge of such change.

DATED this 17th day of April, 2017.

HAPPY JACK'S PETROLEUM, INC.,

By /s/ Wade B. Hill

Wade B. Hill

Authorized Representative

And

/s/ William L. Biggs

William L. Biggs, #10317

Frederick D. Stehlik, #15481

GROSS & WELCH, P.C., L.L.O.

2120 South 72<sup>nd</sup> Street, Suite 1500

Omaha, NE 68124

(402) 392-1500

(402) 392-8101 (Fax)

Its Attorneys

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**Happy Jacks  
Liquidation Analysis**

Fair Value of Personal Assets (per Chapter 11 schedules)	--
Exempt	--
Total Cash	<u>--</u>
Fair Value of Business Assets (per Chapter 11 schedules)	852,282
Negative Cash Accounts	(106,764)
Exempt	--
Total Cash	<u>745,518</u>
Total Cash from Liquidation	745,518
Debt Obligations: (per Chapter 11 schedules)	
--Secured Debt	(1,598,000)
--Unsecured Debt (excluding current Taxes)	(1,848,940)
Tax Obligations Upon Liquidation	<u>--</u>
Net Asset (Deficit) Upon Liquidation	<u>(2,701,422)</u>
Personal Guarantees:	
--WTT unsecured debt	--

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