

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	Chapter 11
	§	
AZTEC OIL & GAS, INC. and	§	Case No. 16-31895
AZTEC ENERGY, LLC	§	
	§	
Debtors. <sup>1</sup>	§	Jointly Administered

THIRD AMENDED DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT IS SUBMITTED TO ALL CREDITORS AND INTEREST HOLDERS OF THE DEBTORS ENTITLED TO VOTE ON THE CHAPTER 11 PLAN SUBMITTED BY FRANKLIN FISHER, JR. AND LIVINGSTON GROWTH FUND TRUST. IT CONTAINS INFORMATION THAT MAY AFFECT YOUR DECISION TO VOTE TO ACCEPT OR REJECT THE PLAN. THIS DISCLOSURE STATEMENT IS INTENDED TO PROVIDE ADEQUATE INFORMATION AS REQUIRED BY THE BANKRUPTCY CODE CONCERNING THE PLAN. ALL CREDITORS AND INTEREST HOLDERS ARE URGED TO READ THE ENTIRE DISCLOSURE STATEMENT AND ACCOMPANYING PLAN WITH CARE. ATTACHED TO THIS DISCLOSURE STATEMENT ARE ADDENDUMS A, B, AND C, WHICH CONTAIN STATEMENTS BY PARTIES WHO OPPOSE APPROVAL OF THE DISCLOSURE STATEMENT AND CONFIRMATION OF THE PLAN.

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Aztec Oil & Gas, Inc. (1902), Aztec Drilling & Operating, LLC. (7258), Aztec Operating Company (4057), Aztec Energy, LLC (8806), Aztec VIII B Oil & Gas, LP (3613), Aztec VIII C Oil & Gas, LP (2901), Aztec XA Oil and Gas, LP (9594) Aztec XB Oil & Gas, LP (3054) Aztec AC Oil & Gas, LP (7949), Aztec XI-A Oil & Gas, LP (7413), Aztec XI-B Oil & Gas, LP (7635), Aztec XI-C Oil & Gas, LP (9282), Aztec XI-D Oil & Gas, LP (2485), Aztec XII-A Oil & Gas, LP (8525), Aztec AII-B Oil & Gas, LP (9158), Aztec AII-C Oil & Gas, LP (8976), Aztec Comanche A Oil & Gas, LP (8651) and Aztec Comanche B Oil & Gas, LP (3795).

## INTRODUCTION

### 1.1 GENERAL INFORMATION CONCERNING DISCLOSURE STATEMENT AND PLAN

The Plan Proponents submit this Disclosure Statement, as may be amended from time to time, under §1125 of the Bankruptcy Code and Rule 3016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) to all of the Debtors’ known Creditors and Interest Holders entitled to vote. The purpose of this Disclosure Statement is to provide adequate information to enable Creditors and Interest Holders who are entitled to vote to arrive at a reasonably informed decision in exercising their respective right to vote. A copy of the Plan is included with this Disclosure Statement. *Your rights may be affected. You should read the Plan together with this Disclosure Statement carefully, and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.*

Capitalized terms used but not defined in this Disclosure Statement shall have the meanings assigned to them in the Plan or in the Bankruptcy Code or Rules unless otherwise indicated.

The Plan Proponents have proposed their Plan consistent with the provisions of the Bankruptcy Code. The Plan proposed by Mr. Fisher and the Livingston Growth Fund Trust (“Creditor Plan” or the “Plan”) provides that all remaining assets of the Debtors will be transferred to Aztec Oil & Gas, Inc., with all litigation claims transferred to a litigation trust for the benefit of all unsecured creditors. All entities shall be dissolved other than Aztec Oil & Gas, Inc., which will continue operations.

This Disclosure Statement is not intended to replace a careful review and analysis of the Plan, including the specific treatment of Claims and Equity Interests under the Plan. It is submitted as an aid and supplement to your review of the Plan and to explain the terms of the Plan. Every effort has been made to fairly summarize the Plan and to inform you how various aspects of the Plan affects your respective position. Again, you are encouraged to consult with your own counsel.

### 1.2 PURPOSE OF THIS STATEMENT

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the “Court”) will consider when deciding whether to confirm the Plan,
- Why the Plan Proponents believe their Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

### 1.3 DISCLAIMERS.

**NO SOLICITATION OF VOTES HAS BEEN OR MAY BE MADE EXCEPT PURSUANT TO THIS DISCLOSURE STATEMENT AND § 1125 OF THE BANKRUPTCY CODE. NO PERSON HAS BEEN AUTHORIZED TO USE ANY INFORMATION CONCERNING THE DEBTORS TO SOLICIT ACCEPTANCES OR REJECTIONS OF THE PLAN OTHER THAN**

**THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. CREDITORS AND INTEREST HOLDERS SHOULD NOT RELY ON ANY INFORMATION RELATING TO THE DEBTORS OTHER THAN THAT CONTAINED IN THIS DISCLOSURE STATEMENT, ANY ATTACHMENTS AND ADDENDUMS, AND THE PLAN.**

**EXCEPT AS SET FORTH IN THIS DISCLOSURE STATEMENT, NO REPRESENTATION CONCERNING THE DEBTORS, THEIR ASSETS, THEIR LIABILITIES, PAST OR FUTURE OPERATIONS, OR CONCERNING THE PLAN ARE AUTHORIZED. ANY REPRESENTATIONS MADE TO SECURE YOUR ACCEPTANCE OR REJECTION OF THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD BE IMMEDIATELY REPORTED TO COUNSEL FOR THE PLAN PROPONENTS.**

**UNLESS ANOTHER TIME IS SPECIFIED, THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE OF THIS DISCLOSURE STATEMENT. NEITHER DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE CONCERNING THE DISCLOSURE STATEMENT AND THE PLAN SHALL UNDER ANY CIRCUMSTANCES IMPLY THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN SINCE THE DATE OF THE DISCLOSURE STATEMENT AND THE MATERIALS RELIED UPON IN PREPARATION OF THE DISCLOSURE STATEMENT WERE COMPILED.**

**THE INFORMATION PROVIDED HEREIN WAS OBTAINED FROM A VARIETY OF SOURCES AND IS BELIEVED TO BE RELIABLE. HOWEVER, THE PLAN PROPONENTS HAVE NOT BEEN ABLE TO INDEPENDENTLY VERIFY EACH AND EVERY STATEMENT CONTAINED HEREIN. ACCORDINGLY, THE PLAN PROPONENTS AND THEIR PROFESSIONALS CANNOT MAKE ANY REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.**

**DISTRIBUTION OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS ANY REPRESENTATION OR WARRANTY AT ALL, EITHER EXPRESS OR IMPLIED, BY THE PLAN PROPONENTS OR THEIR PROFESSIONALS THAT THE PLAN IS FREE FROM RISK, THAT THE ACCEPTANCE OF THE PLAN WILL RESULT IN A RISK-FREE RETURN OR THAT ALL POTENTIAL ADVERSE EVENTS HAVE BEEN ANTICIPATED.**

**THE APPROVAL BY THE BANKRUPTCY COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN OR A GUARANTY OF THE ACCURACY OR THE COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.**

**THIS DISCLOSURE STATEMENT AND THE PLAN SHOULD BE READ IN THEIR ENTIRETY BEFORE VOTING. FOR THE CONVENIENCE OF HOLDERS OF CLAIMS AND EQUITY INTERESTS, THE TERMS OF THE PLAN ARE SUMMARIZED IN THIS DISCLOSURE STATEMENT, BUT ALL SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN, WHICH CONTROLS IN CASE OF ANY INCONSISTENCY.**

**THE INCLUSION OF ANY FACTS IN THIS DISCLOSURE STATEMENT, INCLUDING THE EXHIBITS AND ATTACHMENTS, DOES NOT CONSTITUTE AN ADMISSION BY ANY PARTY WITH RESPECT TO ANY PENDING OR FUTURE LITIGATION.**

#### **1.4 ANSWERS TO COMMONLY ASKED QUESTIONS**

As part of the effort to inform Creditors and Interest Holders regarding the Plan and the Plan confirmation process, the following summary provides answers to questions which parties who receive a disclosure statement often ask.

**THE FOLLOWING SUMMARY IS QUALIFIED IN ITS ENTIRETY BY THE PLAN, WHICH CONTROL IN CASE OF ANY INCONSISTENCY.**

##### **1.4.1 Who are the Debtors?**

The Debtors are Aztec Oil & Gas, Inc., Aztec Energy, LLC, Aztec Operating Company, Aztec Drilling and Operating, LLC, Aztec VIII B Oil & Gas, LP, Aztec VIII C Oil & Gas, LP, Aztec XA Oil & Gas, LP, Aztec XB Oil & Gas, LP, Aztec XC Oil & Gas, LP, Aztec XI-A Oil & Gas, LP, Aztec XI-B Oil & Gas, LP, Aztec XI-C Oil & Gas, LP, Aztec XI-D Oil & Gas, LP, Aztec XII-A Oil & Gas, LP, Aztec XII-B Oil & Gas, LP, Aztec XII-C Oil & Gas, LP, Aztec XII-D, LP, Aztec Comanche A Oil & Gas, LP and Aztec Comanche B Oil & Gas, LP. The nature of the Debtors' business and the major events in this bankruptcy case are described below in Article 3.

##### **1.4.2 What is a Chapter 11 bankruptcy?**

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code that allows financially distressed businesses to reorganize their debts or to liquidate their assets in a controlled fashion. The commencement of a chapter 11 case creates an "estate" containing all of the legal and equitable interests of the debtor in property as of the date the bankruptcy case is filed. During a chapter 11 bankruptcy case, the debtor remains in possession of its assets unless the Court orders the appointment of a trustee which did not occur in this case.

##### **1.4.3 If the Plan governs how my Claim or Interest is treated, what is the purpose of this Disclosure Statement?**

The Bankruptcy Code requires that in order to solicit votes on a bankruptcy plan, the proponent of the plan must first prepare a disclosure statement that provides sufficient information to allow creditors and interest holders to make an informed decision about the plan. The disclosure statement and plan are distributed to creditors and interest holders only after the Bankruptcy Court has approved the disclosure statement and determined that the disclosure statement contains information adequate to allow creditors and interest holders to make an informed judgment about the plan. At that time, creditors and interest holders whose claims and interests are impaired under the Plan also receive a voting ballot and other materials.

##### **1.4.4 Has this Disclosure Statement been approved by the Bankruptcy Court?**

On April 21, 2017 the Bankruptcy Court conditionally approved this Disclosure Statement as containing adequate information. "Adequate information" means information of a kind, and in sufficient detail, as far as is practicable considering the nature and history of the Debtors, to enable a hypothetical investor typical of holders of claims or interests of the relevant classes to make an informed judgment whether to vote to accept or reject the Plan. The Bankruptcy Court's conditional

approval of this Disclosure Statement does not constitute an endorsement of any of the representations contained in either the Disclosure Statement or the Plan. Final approval of the Disclosure Statement will be considered at the confirmation hearing.

#### **1.4.5 How do I determine how my Claim or Interest is classified?**

To determine the classification of your Claim or Interest, you must determine the nature of your Claim or Interest. Under the Plan, Claims and Interests are classified into a series of classes. The pertinent articles and sections of the Disclosure Statement and Plan disclose, among other things, the treatment that each class of Claims or Interests will receive if the Plan is confirmed.

#### **1.4.6 Why is confirmation of the Plan important?**

The Bankruptcy Court's confirmation of a Plan is a condition to carrying out the treatment of Creditors and Interest Holders under the confirmed Plan. Unless the Plan is confirmed, and any other conditions to confirmation or to the effectiveness of the Plan are satisfied, the Debtors are legally prohibited from satisfying Claims or Interests as provided in the Plan. Put more simply, confirmation of a plan in chapter 11 is required before payments to pre-petition Creditors may begin.

#### **1.4.7 What is necessary to confirm the Plan?**

Under applicable provisions of the Bankruptcy Code, confirmation of the Plan requires that, among other things, at least one class of impaired Claims or Interests vote to accept the Plan. Acceptance by a class of claims or interests means that at least two-thirds in the total dollar amount and more than one-half in number of the allowed Claims or Interests actually voting in the class vote in favor of the Plan. Because only those claims or interests who vote on a plan will be counted for purposes of determining acceptance or rejection of a plan by an impaired class, a plan can be approved with the affirmative vote of members of an impaired class who own less than two-thirds in amount and one-half in number of the claims/interests. Besides acceptance of the Plan by a class of impaired creditors or interests, a bankruptcy court also must find that the Plan meets a number of statutory tests before it may confirm the Plan. These requirements and statutory tests generally are designed to protect the interests of holders of impaired claims or interests who do not vote to accept the Plan but who will nonetheless be bound by the Plan's provisions if the bankruptcy court confirms the Plan.

If one or more classes vote to reject the Plan, the the Plan Proponents may still request that the Bankruptcy Court confirm the Plan under § 1129(b) of the Bankruptcy Code. To confirm a plan not accepted by all classes, the plan proponents must demonstrate that the plan does not discriminate unfairly, and is fair and equitable with respect to each class of claims or interests that is impaired under, and that has not accepted, the plan. This method of confirming a plan is commonly called a "cramdown." In addition to the statutory requirements imposed by the Bankruptcy Code, the plan itself also provides for certain conditions that must be satisfied as conditions to confirmation.

## **ARTICLE 2 BACKGROUND**

### **2.1 DESCRIPTION AND HISTORY OF THE DEBTORS' BUSINESS (SEE ALSO ADDENDUM A AND B FOR ADDITIONAL STATEMENTS)**

#### **2.1.1 FORMATION AND HISTORY OF THE DEBTORS PRIOR TO BANKRUPTCY**

The Debtor, originally named Aztec Communication Group, Inc., was newly created in 2003 as a Nevada corporation. Mr. Mychal Jefferson, his wife, and a friend of his were the directors. On or about January 10, 2004 Aztec Communication, Inc. a public Utah Corporation, was merged with the Aztec Communication Group Inc. (Nevada), in accordance and compliance with Utah Revised Business Corporation Act section 16 – 10a – 1405- Effect of Dissolution, and pursuant to a Plan and Agreement of Merger properly filed with the Securities & Exchange Commission. The Nevada entity was the survivor. Approximately mid – 2004, SBI USA, an investment banking firm from California took control of, and subsequently controlled, Aztec Communication Group, Inc (Nevada), as confirmed in a subsequent U.S. Department of Justice investigation of SBI, with the intention of financing and acquiring oil and gas interests and promoting the stock. Aztec Communication Group, Inc. (Nevada), on approximately July 8, 2004 entered a consulting agreement with SBI, created Series A Preferred Shares at the direction of SBI, and authorized and implemented the entity to change its name from Aztec Communication Group Inc. to Aztec Oil & Gas Inc. (“Aztec”). International Fluid Dynamics, Inc., a consulting firm of Franklin C. Fisher, Jr. was retained by Aztec on July 22, 2004 as neither SBI nor Aztec had personnel with oil and gas experience. Mr. Fisher was not an officer or director of Aztec, nor a major shareholder.

In 2004, SBI subsequently negotiated the acquisition of approximately a one third ownership interest in the 7,000-acre (approx.) Bigfoot oilfield in South Texas. SBI obtained approximately \$3 million in financing for Aztec, of which Mr. Fisher guaranteed 50% to SBI; and, SBI sold its interest in the Bigfoot field to Aztec. SBI and Mr. Fisher then each made separate \$700,000 fundings to facilitate Aztec drilling new wells in the Bigfoot field. After approximately 18 months, in early 2006, Aztec sold its Bigfoot interests for cash at a profit of between one half and \$1 million. However, SBI and Mr. Fisher had to each take \$700,000 notes from the Bigfoot field buyers for their previous fundings to drill wells as there was not enough cash in the deal to pay Aztec, SBI and Mr. Fisher. Aztec’s proceeds were used to pay off all Aztec debt and operations, leaving Aztec with very little funding to conduct business but totally free of major debt.

In the late 2004 SBI required Mr. Jefferson and his fellow Aztec directors to provide SBI with conditional “pocket” resignations to be held until acceptance of those resignations by the same Aztec board and SBI’s appointment of new directors. Aztec was managed from California, had its bank accounts in California, and there were no bank accounts in Texas. Plus, the only active officer of Aztec, other than Mr. Jefferson and his wife who were normally out of state, was an associate of SBI’s in California. Due to the need to conduct business in Texas, and SBI’s wishes, on January 2, 2005 Mr. Kenneth Lehrer was elected CFO and Vice President of Aztec. Mr. Lehrer was the only active officer of Aztec in Texas (Mr. Jefferson and his wife were in Florida) and Mr. Lehrer among other functions approved all the Aztec press releases issued by SBI and Aztec after approximately April 2005. The foregoing was documented and confirmed per the DOJ investigation referenced above and Aztec’s third party investor relations firm.

In August 2005 Mr. Jefferson’s directors accepted, as Aztec board members, their own resignations, as provided via their previous “pocket” resignations tendered to SBI in late 2004. Prior to the last Jefferson director resigning, Mr. Kenneth Lehrer was elected as the sole director of Aztec. Mr. Lehrer, as the sole director, CFO and V.P., thereby, controlled all aspects of Aztec until later in 2005 when Mr. Mark Vance was elected a director and Mr. Kirk Blackim, a seasoned oil executive, was subsequently hired as president and elected a director. Mr. Lehrer and Mr. Vance, both of whom are still Aztec directors, have controlled the Aztec board as majority directors since that time in 2005 through present. Mr. Lehrer and Mr. Vance attempted to elect Mr. Jeremy Driver, who they had elected president of Aztec in early 2014 to the board in April 2015; however, Mr. Driver’s election has been questioned.

In 2006 Aztec initiated legal discussions with SBI to have SBI exit Aztec. Mr. Fisher was called upon to buy SBI’s shares as Aztec did not have any funding to do so. Aztec reached a settlement with SBI and SBI totally withdrew from the Aztec. Mr. Blackim, as president of Aztec, and his group of officers tried to make Aztec profitable; however, Mr. Fisher was constantly called upon to lend money to Aztec to keep it



afloat. In June 2007 Mr. Blackim resigned as president and a director to take another job. Upon not being able to find anyone to replace Mr. Blackim, Mr. Fisher was requested and elected by the Aztec board to become CEO and director of Aztec. All the foregoing is clearly stated in detail in the related Aztec board minutes and Mr. Fisher's employment agreement with Aztec. Mr. Fisher's employment agreement was amended twice in 2008 as the job was taking much more time and effort than had been agreed.

Before the resignation of the board of directors, the board approved a resolution amending the stock warrant and award plan, approving a consulting agreement to International Fluid Dynamics, llc. On July 22, 2004, IFD entered a consulting agreement with Aztec providing for payments between \$10,000.00 and \$15,000.00 a month until December, 2014. Mr. Fisher was also granted 6 million warrants to purchase restricted common stock of Aztec Oil.

Also In 2006 Mr. Fisher, who at that time was solely a consultant to Aztec through International Fluid Dynamics ("IFD"), had been requested by Aztec to suggest some business into which Aztec could be molded to become profitable. Mr. Fisher developed an investment drilling program strategy, and personally drew up the business plan and all supporting documents and forms. Aztec subsequently created subsidiary entities Aztec Drilling & Operating, Inc. ("ADO"), Aztec Energy, LLC ("Aztec Energy") and Aztec Operating, Inc. ("Aztec Operating").

In late 2008 Mr. Waylan Johnson was hired as president to take over Aztec's operations. Mr. Fisher agreed to stay for one year and train Mr. Johnson regarding the Aztec programs; however, Mr. Fisher had already informed everyone, inside and outside of Aztec, that he was retiring from most activities including Aztec at his 70th birthday in 2010. By late 2009 the Aztec investment drilling programs were moving along quite well and looked quite promising. On January 28, 2010 Mr. Fisher submitted his resignation to the Aztec board as CEO and director. At the request of the board he agreed to stay on as a consultant and the board approved a consulting agreement whereby Fisher became "Senior Consultant" to the Aztec board, not the officers. Mr. Fisher's vacated board position was filled by Mr. Dayton Wheeler (Mr. Fisher's step-son), a corporate analyst from Dallas, Texas. Mr. Lehrer and Mr. Vance remained as controlling, majority directors of Aztec, as they had been since 2005.

In late 2012 Aztec was planning to return to "full reporting status" as a public company. As part of implementing this action, Aztec's corporate counsel requested Mr. Fisher, as a consultant, to conduct a written internal review of Aztec's operations and activities. Mr. Fisher discovered some questionable activities on the part of Mr. Waylan Johnson president of Aztec. As can be seen from the numerous Board of Directors minutes during that time, over the next several months the board progressively stripped Mr. Johnson of certain powers and authority. Upon conclusion of the investigation Mr. Fisher submitted a full written report to the Aztec board and Aztec's corporate counsel. The board interviewed and met with Mr. Johnson, without Mr. Fisher present, and determined to terminate Mr. Johnson subject to Mr. Johnson's promise to provide the board with an adequate, written explanation of his actions. Mr. Johnson failed to provide anything to the board and within a matter of weeks after their meeting with Mr. Johnson. In July 2013, the Aztec board formally terminated Mr. Johnson and initiated a lawsuit against Mr. Johnson and his firms. The lawsuit, which is of public record, alleged very serious violations of Mr. Johnson's duties and obligations as president of Aztec, plus fraud, misappropriation of funds, etc. Mr. Johnson denied the allegations, and in 2015, a settlement was eventually reached. Mr. Johnson at time of termination owned approximately 10% of Aztec's outstanding shares. Aztec suffered a serious financial setback, again requiring Mr. Fisher to lend significant cash funds to Aztec as Aztec was concerned about the accuracy of its financial statements and could not risk borrowing from its bank, even if available.

In early 2014, Mr. Fisher contacted Mr. Jeremy Driver ("Driver") at the insistence of the Aztec board regarding the vacancy of the Aztec president position. In March 2014, the Aztec board hired Driver as president under a limited and restrictive employment agreement. Mr. Lehrer expressed grave reservations

about Driver's abilities and capabilities in an email to Mr. Fisher. Mr. Driver had a limited oil and gas background and knowledge; however, was initially hired by Aztec to implement a proposed "Rollup" of the Aztec drilling partnerships into Aztec (which had already been begun by Aztec's corporate counsel); and, as Mr. Driver was an MBA, he was to implement bringing Aztec's financials current to the level acceptable by the SEC for a "full reporting" publicly traded company. At the time, Mr. Driver was hired, Aztec's most recent, fully audited financial report, filed with the SEC, and signed by Aztec's directors, showed Aztec with a net asset value of approximately \$24 million. Mr. Driver subsequently hired a chief financial officer, and outside financial consultants to assist in organizing the company's financials.

Mr. Driver approached Mr. Waylan Johnson the ex-president of Aztec, who was still being sued by Aztec, about Mr. Driver and his outside of Aztec business and family associates directly and personally buying Mr. Johnson's Aztec shares (approximately 10% of Aztec's outstanding stock). In return, as acknowledged in a formal meeting attended by Aztec's corporate counsel and Mr. Fisher, Mr. Driver agreed to get Aztec to drop its lawsuit against Mr. Johnson and pay all of Mr. Johnson's fees and expenses. The plan was rejected; but, as a concession to Mr. Johnson, Mr. Driver insisted that the Aztec board agree for Aztec to directly repurchase Mr. Johnson's stock and to drop the lawsuit against Mr. Johnson.

Mr. Driver then contacted, in coordination with his litigation attorneys at Christian Smith and Jewell, Mr. Sonfield, the trustee of Livingston Growth Fund Trust (the "Trust"), set up by Mr. Fisher as an estate planning trust for Mr. Fisher's wife. Mr. Driver offered that he, his business associates and in-laws, would buy a major part or all the Trust's Aztec shares. That offer was rejected by the Trust.

Mr. Driver then personally, and with the assistance of the law firm of Christian Smith and Jewell ("CSJ") filed and pursued a lawsuit that would either negate or "freeze" the stock held by Mr. Fisher and the Trust, or force Mr. Fisher to make concessions in settlement with Aztec. CSJ has a long history of personally and corporately representing Mr. Driver's father in law, Mike Watts, and Mr. Watts brother, Ken Watts.

CSJ was not formally hired by Aztec until the board meeting of April 2, 2015, which is the same day Mr. Lehrer and Mr. Vance as majority directors, jointly with Mr. Driver, approved the filing of a 42 page, detailed lawsuit petition against Mr. Fisher, Mr. Robert Sonfield and Mr. Mychal Jefferson. That lawsuit is pending in the Aztec bankruptcy proceeding. That 42-page lawsuit petition had been prepared by CSJ with Mr. Driver, and possibly Mr. Lehrer and Mr. Vance, prior to the employment of CSJ by the Aztec board on April 2, 2015. Mr. Mike Watts was also involved in the early discussions as he later professed he had suggested to Driver not to file the April 2, 2015 lawsuit. In that April 2, 2015 board meeting, Mr. Lehrer and Mr. Vance also elected Mr. Driver as the fourth director of Aztec. The other Aztec director, Mr. Wheeler, was excluded from all the prior discussions with Mr. Driver, CSJ and the other directors. Mr. Wheeler (who had attended the April 2, 2015 board meeting telephonically, as had Mr. Vance) in a timely email after the April 2, 2015 board meeting, sent to Mr. Driver, Mr. Lehrer and Mr. Vance' stated that he had been defrauded and misled personally and as an Aztec director in the April 2, 2015 board meeting and that any of his participation in same was void.

Also in the April 2, 2015 board meeting, Mr. Driver, Mr. Lehrer and Mr. Vance then passed amendments to the bylaws of Aztec at the recommendation of CSJ to effectively prevent any shareholder's meetings or actions without the specific approval of Mr. Driver, Mr. Lehrer and Mr. Vance. Mr. Driver on the same afternoon of April 2, 2015 after the relatively short board meeting (which board meeting Mr. Vance and Mr. Wheeler only attended telephonically), called Mr. Fisher and informed him that Aztec had filed the CSJ lawsuit against Mr. Fisher, Mr. Sonfield, corporate counsel, and the Trust. Mr. Fisher then confirmed the phone call from Driver and its content to the entire Aztec board in an email that same afternoon of April 2, 2015. At that same April 2, 2015 board meeting Mr. Driver also had his original employment contract, which was still "in term", altered to terms more favorable to him. A formal written demand was immediately made to the entire Aztec board for a shareholders' meeting to be held, as confirmed in Mr. Wheeler's email to the



board, but Mr. Driver, Mr. Lehrer and Mr. Vance refused to do so.

During the over 3 years of Mr. Driver's employment by Aztec, no full financial statements were finalized or distributed to shareholders, lenders, creditors, or Aztec directors despite continuous requests for same. Also, no "rollup" of the Aztec drilling partnerships was accomplished. Mr. Fisher obtained Aztec a \$600,000 loan from Creditsuisse, specifically to implement Aztec's drilling operations in the drilling partnerships but Mr. Driver did not drill any of those wells, or any others. As explained further under Section "2.1.3 Debtors' Efforts to Avoid Bankruptcy", Driver and the majority directors sold all or substantially all of Aztec's assets for barely over \$2 million and yet no assets or anything of value were added to, or retained.

### **2.1.2 THE DRILLING PROGRAMS AND CREATION OF THE AZTEC L.P.'S**

Beginning in 2006, Aztec engaged in the business of sponsoring oil and gas drilling programs in Texas and Louisiana through private placement memorandums ("PPM's"). The PPM's provided investors the opportunity to invest in a Program which would create a new limited partnership created for the purpose of drilling and completing wells, receiving income and ultimately would result in quarterly partnership distributions pro rata to each individual investor/partner.

As a result, Aztec created more than a dozen limited partnership drilling programs raising approximately \$53 Million through FINRA-registered broker-dealers. As of 2015, Aztec, Aztec Energy or Aztec D&O were managing 14 active limited partnerships with more than 1,000 investors with oil wells throughout Texas with various operators (the "Aztec Limited Partnerships").

The drilling program and creation of the Aztec Limited Partnerships was an integral, critical component of the operations of Aztec. To participate in a drilling program, investors would invest into programs pursuant to a PPM and Partnership Agreement offered by FINRA-registered broker-dealers. The public parent company Aztec Oil & Gas, Inc. was indirectly the PPM sponsor. The offered programs included projects which were either already involved and/or were in the process of being made available by Aztec Energy and Aztec D&O. As such, Aztec Energy and Aztec D&O, as contractors to the Aztec Limited Partnerships, would find the opportunity and procure the rights to drill the oil and gas wells (the "Projects") while the broker-dealers were simultaneously seeking investors under the PPM. The investors would be provided the PPM along with the Partnership Agreement through their FINRA-registered broker-dealers. An investor would then execute the partnership agreement and return to their broker-dealer along with their initial investment. Upon investment and execution of the partnership agreement and termination of the offering, the investors were converted to partners (limited and general) within a newly created limited partnership at the sole discretion of Aztec Energy. Aztec Energy retained a 30% partnership interest, of which 29% was assigned to Aztec.

### **2.1.3 HISTORICAL ACCOUNTING AND REVENUE OF THE DEBTORS**

Aztec made a series of statements to investors and the SEC that it estimated it would drill and complete approximately 393 wells between 2006 and 2013. These statements were contained within the various PPM's and partnership agreement's as well as the requirements under the Texas Railroad Commission for the maintenance, operation and drilling of wells. As such, Aztec and its subsidiaries Aztec Energy and Aztec D&O, were spending operational costs and purchase expenses prior to receiving the actual revenue from these wells. These direct costs were absorbed by Aztec, Aztec D&O, and Aztec Energy.

The Debtors' invested and utilized a complex oil and gas accounting software known as Oil and Gas Systems or "OGSYS". OGSYS provided the accounting support necessary for the partnership accounting. OGSYS' system provided allocations for the "JIB PayDeck Accounting" per entity. The JIB PayDeck's are a critical aspect of the software which provides for several different classifications related to the allocation of

working interest revenue received by ADO within the Revenue Account and expenses amongst the various entities, including but not limited to partnership groups, pools, subsidiaries, and the parent company.

Through the OGSYS accounting software, revenue was allocated pursuant to the JIB PayDeck's – as each entity, which had a working interest ownership in any wells, had its own PayDeck. The only entities which owned working interests were the parent company Aztec (sometime through its subsidiaries) and the Aztec Limited Partnerships.

Aztec D&O was a drilling and operating contractor to the partnerships as the defined “Operator” pursuant to the partnership agreements. As such, Aztec D&O and/or Aztec often held title in the wells. This arrangement was created for simplicity purposes for the well operators and to lower management costs of the partnerships rather than have title and therefore liability diffused in multiple partnerships, especially if a drilled well had to be plugged. Therefore, as is often typical in the oil industry, working interest revenue would be originally deposited into the Aztec D&O Revenue Account to then be allocated internally through the OGSYS PayDeck's. As holder of title, Aztec D&O was responsible for all direct operational costs incurred on behalf of the Aztec Limited Partnerships on a well-by-well basis. These direct costs were deducted from the revenue received from the production purchasers or third party well operators prior to any distribution or allocation.

After the payment of direct operational and field costs, the Aztec Limited Partnerships paid management fees as prescribed and dictated under the partnership agreements. The remaining revenue was then allocated the partnerships pro rata and then passed through to the partners. Historically, this process was done on a monthly or quarterly basis.

#### **2.1.4 DEBTORS' EFFORTS TO AVOID BANKRUPTCY**

Since Aztec, under Mr. Driver, Mr. Lehrer and Mr. Vance did not implement further well drilling for most of the Aztec Limited Partnerships, the partnerships began experiencing periodic negative cash flow. Oil production normally declines in new oil wells at a more rapid rate than when the wells are older, and these partnerships were designed to have significant additions of newly drilled wells added to the wells already drilled. That model was designed so a more stabilized income would be generated for the partnerships over a long period. Because of the addition of no newly drilled wells, including the flush production associated with such, the operational costs on some partnerships started to exceed the Working Interest income. While this was bad for the partnerships, the programs were designed by Mr. Fisher to provide Debtor Aztec with a substantial amount of its income from operational costs charged to the partnerships. That provision was always fully disclosed to the investors and was part of all the program documentation. The partnerships, not Aztec, were taking the benefit and risk of drilling and production, as required by the tax code. While no one anticipated the significant decline in oil prices in 2015 and 2016 and while Aztec did own, as a partner, a 30% interest in each of the partnerships; the overall program had been carefully designed to insulate Aztec's operational charges from such oil price declines due to Debtors' allowed charges to the partnerships for operations. Obviously, Aztec's “equity” interests in the partnerships were impacted just like any other partner in a partnership from oil price increases or declines.

The optimistic scenario was that as long as the partnerships had oil production Aztec would still benefit due to its charges for operations, regardless of whether the partnerships themselves could make a profit from oil sold. Even the significant reduction in oil prices in 2015 and 2016 had only a minimal impact on Debtors' operational charges to the partnerships. With control of its costs, Aztec would have been able to function, and even prosper, until oil prices started to recover (as they have presently). At that point Aztec's 30% “equity” interests in each partnership would have benefited, but its operational charges would have remained quite constant except for documented and agreed cost of living increases, etc.

The sale of most of the Aztec related oil properties by present management was below market and unnecessary if Debtors' legal and executive costs had not been unnecessarily inflated. The one exception is the sale of the Sydri Energy well interests to Dallas Petroleum. Sydri is a third-party operator and this was the type of full market sale anticipated to occur periodically out of the multitude of partnership properties. On the other hand, the oil property sales controlled by Debtor were not of the same benefit, quality market pricing or necessity as the Sydri/Dallas Petroleum transaction.

In 2014, Aztec and its Limited Partnerships were operating at a loss due to excessive legal and executive costs. In an effort to facilitate management's plans, and to possibly avoid bankruptcy and insolvency, Aztec, as the sole managing general partner of the Aztec Limited Partnerships, through Aztec Energy, and Aztec D&O, as often the title holder, began marketing the oil and gas assets to continue to pay legal and executive costs. In early 2015, the Debtors began divesting these real property assets through purchase and sale agreements and assignments.

#### Sale to Thomas K. Erwin, LLC

On January 7, 2015, Aztec entered into an Asset Sale Agreement and Promissory Note with Thomas K. Erwin, LLC to sell the working interests owned by some of the Aztec Limited Partnerships for a total purchase price of \$575,000.00, with \$550,000 paid in cash at closing and the remaining \$25,000 due and owing on March 7, 2015 pursuant to the promissory note executed between Aztec and Thomas K. Erwin, LLC. Despite alleged collection efforts, the remaining \$25,000.00 has not been paid by Thomas K. Erwin, LLC. This was one of Aztec's more valuable leases, and should not have been sold. It had previously been offered to Mr. Erwin at over \$850,000.00.

The working interests purchased by Thomas K. Erwin, LLC known as the "Robinson Wells" are located in Fort Bend County, Texas. Specifically, the following working interests sold are as follows:

WELL NAME	COUNTY	OPERATOR	VIII B WI%	VIII C WI%	XA WI%	XIC WI %	XID WI%	12A WI	TOTAL WI
AZTEC ROBINSON #115	Fort Bend	TSOC	10.292%	8.641%	19.317%				38.250%
AZTEC ROBINSON #118	Fort Bend	TSOC	10.292%	8.641%	19.317%				38.250%
AZTEC ROBINSON #126	Fort Bend	TSOC	10.292%	8.641%	19.317%				38.250%
AZTEC ROBINSON #311	Fort Bend	TSOC	2.000%	2.000%	4.000%	34.750%			42.750%
Aztec Robinson #312	Fort Bend	TSOC				5.130%	5.130%	32.490%	42.750%
Aztec Robinson #412	Fort Bend	TSOC				5.130%	5.130%	32.490%	42.750%

#### Sale to Dallas Petroleum

In May 2015, as a result of Sydri's constant marketing diligence, Dallas Petroleum made an offer to all working interest owners in the wells operated by Sydri Energy, LLC. The board of Aztec agreed with Aztec's management to accept the offer as it exceeded management's expectations and internal and public market valuations of these interests. Other Sydri working interest owners had already elected to sell their interests.

With respect to Aztec, Dallas Petroleum purchased the working interest ownership of wells located in San Patricio County, Texas – including the working interests owned by the Aztec Limited Partnerships. The total purchase price paid to Aztec was \$565,889.64 and was allocated among the following Aztec Limited Partnership's pursuant to their percentage of working interest ownership:

WELL NAME	COUNTY	OPERATOR	VIII B W1%	VIII C W1%	XA W1%	XB W1%	XC W1%	XIB W1%	XIC W1%	XID W1%	12B WI	12C W1%	Comanche A WI	TOTAL WI
Marie Welder Ford #5B	San Patricio	Sydri							43.875%	23.625%				67.500%
Welder #36A	San Patricio	Sydri				4.549%	40.939%							45.488%
Welder #A37	San Patricio	Sydri						41.738%						41.738%
Welder #A38	San Patricio	Sydri	2.000%	2.000%	4.000%				37.488%					45.488%
Welder, R.H. "B" #20	San Patricio	Sydri							34.425%	6.075%				40.500%
Welder, R.H. 'B' #21	San Patricio	sydri									12.000%	3.000%	45.000%	60.000%

Transfer to Zeigler-Peru

Aztec Drilling & Operating, LLC filed a suit against Ziegler-Peru, Inc. in January 2012 prior to Mr. Driver's tenure. The case was settled by Mr. Driver in 2014, and resulted in a non-suit and Aztec taking nothing. As a condition of settlement, Aztec transferred the below working interest ownerships to Ziegler-Peru, Inc. It is believed that these properties could have been sold instead of transferred pursuant to the non-suit, because the properties were costing Aztec very little, if any cash to maintain and Ziegler-Peru had previously, prior to Mr. Driver, communicated a willingness to divide the properties to settle the lawsuit.

WELL NAME	COUNTY	OPERATOR	VIII B W1%	VIII C W1%	XA W1%	XB W1%	XC W1%	XIA W1%	XIB W1%	TOTAL WI
AZTEC N #2	Brown	ADO						40.000%	40.000%	80.000%
AZTEC NN #1	Coleman	ADO						40.000%	40.000%	80.000%
AZTEC NN #3	Coleman	ADO						40.000%	40.000%	80.000%
Aztec WW #2	Coleman	ADO						40.000%	40.000%	80.000%
Aztec WW #3	Coleman	ADO						40.000%	40.000%	80.000%
Aztec Beaty #01	Brown	ADO						70.000%		70.000%
Aztec Beaty #02	Brown	ADO						70.000%		70.000%
Aztec Beaty #03	Brown	ADO						70.000%		70.000%
Aztec Beaty #04	Brown	ADO						70.000%		70.000%
Aztec Beaty #05	Brown	ADO						70.000%		70.000%
Aztec Beaty #06	Brown	ADO						70.000%		70.000%
Aztec Beaty #07	Brown	ADO						70.000%		70.000%
Aztec Beaty #08	Brown	ADO						70.000%		70.000%
Aztec Beaty #09	Brown	ADO						70.000%		70.000%
Aztec Beaty #10	Brown	ADO						70.000%		70.000%
Aztec Beaty #11	Brown	ADO						70.000%		70.000%
Aztec Beaty #12	Brown	ADO						70.000%		70.000%
Aztec Beaty #13	Brown	ADO						70.000%		70.000%
Aztec Beaty #14	Brown	ADO						14.000%	26.000%	40.000%
Aztec Beaty #15	Brown	ADO						14.000%	26.000%	40.000%
Aztec Beaty #16	Brown	ADO						14.000%	26.000%	40.000%
Aztec Beaty #17	Brown	ADO						14.000%	26.000%	40.000%
Aztec Beaty #18	Brown	ADO						14.000%	26.000%	40.000%
Aztec Beaty #19	Brown	ADO						14.000%	26.000%	40.000%
Aztec Beaty #20	Brown	ADO						14.000%	26.000%	40.000%
Aztec Beaty #21	Brown	ADO						14.000%	26.000%	40.000%
Aztec Beaty #22	Brown	ADO						14.000%	26.000%	40.000%
Aztec Beaty #23	Brown	ADO						14.000%	26.000%	40.000%
Aztec Beaty #24	Brown	ADO						14.000%	26.000%	40.000%
Aztec DVG #301 "Goode"	Brown	ADO						80.000%		80.000%
Aztec DVG #302 "Goode"	Brown	ADO						80.000%		80.000%
Aztec DVG #303 "Goode"	Brown	ADO						80.000%		80.000%
Aztec DVG #304 "Goode"	Brown	ADO						80.000%		80.000%
Aztec DVG #305 "Goode"	Brown	ADO						80.000%		80.000%
Aztec DVG #306 "Goode"	Brown	ADO						80.000%		80.000%
Aztec Guthrie - 10 group #04	Brown	ADO						51.000%		51.000%
Aztec Guthrie - 10 group #05	Brown	ADO						51.000%		51.000%
Aztec Guthrie - 10 group #07	Brown	ADO						51.000%		51.000%
Aztec Guthrie - 10 group #08	Brown	ADO						51.000%		51.000%
Aztec Guthrie - 10 group #09	Brown	ADO						51.000%		51.000%
Aztec Guthrie - 10 group #12	Brown	ADO						51.000%		51.000%
Aztec Guthrie - 10 group #14	Brown	ADO						51.000%		51.000%
Aztec Guthrie - 10 group #15	Brown	ADO						51.000%		51.000%
Aztec Guthrie - 10 group #16	Brown	ADO						51.000%		51.000%
Aztec Guthrie - 10 group #18	Brown	ADO						51.000%		51.000%
Aztec Guthrie - 8 group #01	Brown	ADO	13.720%	11.520%	25.760%					51.000%
Aztec Guthrie - 8 group #02	Brown	ADO	13.720%	11.520%	25.760%					51.000%
Aztec Guthrie - 8 group #03	Brown	ADO	13.720%	11.520%	25.760%					51.000%
Aztec Guthrie - 8 group #06	Brown	ADO	13.720%	11.520%	25.760%					51.000%
Aztec Guthrie - 8 group #10	Brown	ADO	13.720%	11.520%	25.760%					51.000%
Aztec Guthrie - 8 group #11	Brown	ADO	13.720%	11.520%	25.760%					51.000%
Aztec Guthrie - 8 group #13	Brown	ADO	13.720%	11.520%	25.760%					51.000%
Aztec Guthrie - 8 group #17	Brown	ADO	13.720%	11.520%	25.760%					51.000%
AZTEC H #01	Brown	ADO						40.000%	40.000%	80.000%
AZTEC H #02	Brown	ADO						40.000%	40.000%	80.000%
AZTEC H #03	Brown	ADO						40.000%	40.000%	80.000%
AZTEC H #04	Brown	ADO						40.000%	40.000%	80.000%
AZTEC H #05	Brown	ADO						40.000%	40.000%	80.000%
AZTEC H #06	Brown	ADO						40.000%	40.000%	80.000%
AZTEC H #07	Brown	ADO						40.000%	40.000%	80.000%
AZTEC H #08	Brown	ADO						40.000%	40.000%	80.000%
AZTEC H #09	Brown	ADO						40.000%	40.000%	80.000%
AZTEC H #10	Brown	ADO						40.000%	40.000%	80.000%
Aztec Jay #01	Brown	ADO						40.000%	40.000%	80.000%
Aztec Jay #02	Brown	ADO						40.000%	40.000%	80.000%
Aztec Jay #03	Brown	ADO						40.000%	40.000%	80.000%
Aztec Jay #04	Brown	ADO						40.000%	40.000%	80.000%
Aztec Jay #05	Brown	ADO						40.000%	40.000%	80.000%
Aztec Jay #06	Brown	ADO						46.400%	33.600%	80.000%
Aztec Jay #07	Brown	ADO						46.400%	33.600%	80.000%
Aztec Jay #08	Coleman	ADO						46.400%	33.600%	80.000%
Aztec Jay #09	Brown	ADO						46.400%	33.600%	80.000%
Aztec Jay #10	Brown	ADO						46.400%	33.600%	80.000%
Aztec Jay #11	Brown	ADO						46.400%	33.600%	80.000%
Aztec M #1	Brown	ADO						20.000%	20.000%	40.000%
Aztec M #2	Brown	ADO						20.000%	20.000%	40.000%
Aztec M #3	Brown	ADO						20.000%	20.000%	40.000%
Aztec M #4	Brown	ADO						20.000%	20.000%	40.000%
Aztec M #5	Brown	ADO						20.000%	20.000%	40.000%
Aztec M #6	Brown	ADO						20.000%	20.000%	40.000%
Aztec M #7	Brown	ADO						20.000%	20.000%	40.000%
Aztec M #8	Brown	ADO						20.000%	20.000%	40.000%
AZTEC TOBIN #1	Coleman	ADO						70.000%		70.000%
AZTEC TOBIN #2	Coleman	ADO						70.000%		70.000%
AZTEC TOBIN #3	Coleman	ADO						70.000%		70.000%
AZTEC TOBIN #4	Coleman	ADO						70.000%		70.000%
AZTEC TOBIN #5	Coleman	ADO						70.000%		70.000%
AZTEC TOBIN #6	Coleman	ADO						70.000%		70.000%
AZTEC TOBIN #7	Coleman	ADO						70.000%		70.000%
AZTEC TOBIN #8	Coleman	ADO						70.000%		70.000%
Aztec W #1	Coleman	ADO						40.000%	40.000%	80.000%
Smith, Edna #101	Brown	ADO						80.000%		80.000%
Smith, Edna #102	Brown	ADO						80.000%		80.000%
Smith, Edna #103	Brown	ADO						80.000%		80.000%
Smith, Edna #104	Brown	ADO						80.000%		80.000%
Smith, Edna #105	Brown	ADO						80.000%		80.000%
Smith, Edna #106	Brown	ADO						80.000%		80.000%



### Sale to Trek Energy Partners

On November 1, 2015, Aztec Energy, Aztec D&O and the Aztec Limited Partnerships entered an Asset Purchase Agreement with Trek Energy Partners, LLC, to sell substantially all of the remaining working interest assets owned by the Debtors' for a low, total purchase price of \$1,200,000.00, paid in two separate tranches. This transaction is currently subject to litigation (Bankruptcy Adversary Proceeding 16-03106). No authorization was formally obtained to sell all, or substantially all of the Debtors' assets. Trek Energy Partners was formed two weeks after the Aztec April 2, board meeting by and controlled by Josh Posten. Mr. Posten is a business associate and close family friend of Jeremy Driver, Aztec's President and Mr. Diver's father-in-law, Mike Watts.

It is believed that these assets were sold for below market price due to insider relationships. There was no public offering or other marketing efforts to obtain the best and highest price, with no competitive bidding taking place. The operator of the wells had indicated to Mr. Driver, immediately prior to the sale to Mr. Posten, that he would match or exceed any legitimate offer to purchase the wells, however Aztec did not contact him prior to the sale to Posten. Per communications between Driver and Posten their sale price was originally discussed, in August 2015, at \$2.2 million. It is believed by the Plan Proponents that the sale price was still substantially below the market value of the cash flow and long life of the well properties. Mr. Posten and Mr. Driver subsequently agreed to drop the price to \$1.8 million, but to have Aztec add ten (10) wells operated by Resaca Resources to the group of wells Mr. Posten was buying. Those 10 wells were cash flowing an additional current eight-month average of \$12,858 (twelve thousand eight hundred fifty-eight dollars) per month. The addition of those wells and their monthly Net cash flow should have resulted in an increase in the sale price, not a decrease to \$1.8 million. The Debtor argues that the drop in the sale price was due to market conditions. On October 8, 2015 Driver and Posten signed a formal, binding offer and acceptance agreement lowering the price for all the same wells to \$1.2 million. The EIA shows oil prices rose from \$42.87/barrel in August 2015 to \$46.22/barrel in October 2015. Also, Mr. Driver had received a full reserve report on October 2, 2015 setting the value (on a non-discounted basis) of Aztec's wells as of December 31, 2014, at over \$26 million. Mr. Driver gave this report to Mr. Posten prior to the October 8, 2015 binding agreement they signed. In addition to the foregoing Mr. Driver then had Aztec agree to accept all well plugging liability instead of Mr. Posten. The internal documents showed that all the wells being sold to Mr. Posten had a current eight (8) month average Net cash flow to Aztec of \$68,542 (Sixty-Eight Thousand Five Hundred Forty-Two dollars) monthly.

## **2.2 DEBTORS FINANCIAL INFORMATION**

The Debtors file monthly operating reports with the Bankruptcy Court, which reflect current financial information and are publicly available for inspection at the office of the Clerk of the Court.

## **2.3 MANAGEMENT OF THE DEBTORS BEFORE AND DURING BANKRUPTCY**

The Managers of the Debtor during the Debtor's chapter 11 case have been:

Jeremy Driver, President	Chairman and Director
Dr. Kenneth Lehrner	Director
Mr. Dayton Wheeler	Director
Mr. Mark Vance	Director

After the effective date of the order confirming a Plan, the current officers and directors will



immediately resign.

Pursuant to the Plan, the responsibilities of post-Confirmation management of the companies will be determined at a shareholder's meeting, where new directors will be elected. The new directors will be responsible for hiring a new management team as they see fit in their business judgment. The Trustee of the Litigation Trust will be responsible for the management of all transferred litigation.

## **2.4 EVENTS LEADING TO CHAPTER 11 FILING**

### **2.6.1 The Debtors' Assets.**

On the Petition Date, the Debtors' most valuable assets consisted of its cash (currently held on deposit by Christian Smith & Jewell, LLC), and its minimal, remaining working interest ownership in the two wells located in Tyler County, Texas. On July 6, 2016, the Debtors filed with the Bankruptcy Court the Schedules of Assets and Liabilities and Statements of Financial Affairs (collectively, the "Schedules"). The Schedules contain a detailed listing of the Debtors' assets and the amounts owed to Creditors based on the Debtors' books and records. In connection with this Disclosure Statement, Creditors and Interest Holders are referred to the Schedules. The Schedules are available online through the PACER system contacting Debtors' counsel.

### **2.6.2 Liabilities and Claims against the Debtors.**

The Schedules contain a detailed listing of Creditors, together with the estimated amount of Claims. Creditors and Interest Holders are referred to the Debtors' Schedules. In addition, 43 proofs of claims have been filed in the Bankruptcy Case. A number of the proofs of claim are duplicative of the Debtors' Schedules and many sizeable claims are disputed through litigation by the Debtors. Additionally, many claims may be duplicative as they were filed against multiple Debtors. The last day to file a proof of claim was September 19, 2016.

### **2.6.3 Secured Claims.**

The Debtors' only purported secured creditor, Creditsuisse, Ltd., is owed approximately \$186,015.56. The Debtors will continue to review the alleged secured proofs of claims. On November 3, 2016, the Court held that the loan documents by and between Aztec Oil & Gas, Inc. and Creditsuisse, Ltd. do not create a real property lien in favor of Creditsuisse, Ltd. on any assets in Medina County owned or formerly owned by the Aztec Limited Partnerships. The Litigation includes claims by Creditsuisse for declaratory judgment and to quiet title to the real property. The Bankruptcy Court has not ruled on those claims.

### **2.6.4 Priority Claims.**

A number of priority proofs of claim were scheduled and filed. These claims primarily involve taxes owed to governmental units which have been resolved by the Debtors.

### **2.6.5 General Unsecured Claims.**

Based on the claims register and the schedules, unsecured claims of over \$5 Million have been filed against the Debtors. This number may not include all tort claims, unliquidated claims or claims for litigation damages. It is expected that a significant number of unsecured proofs of claim maybe the subject to objection. The Plan Proponents are unable to predict the outcome of any anticipated claim

objections that may be filed due to pending objections and adversary proceedings.

**THE RIGHT OF ALL PARTIES AND PARTIES-IN-INTEREST TO OBJECT TO ANY CLAIM FILED IN THIS CASE IS EXPRESSLY RESERVED. THE INCLUSION OF A CLAIM OR CLAIMS WITHIN THIS DISCLOSURE STATEMENT IS NOT AN ADMISSION REGARDING THE VALIDITY OR ALLOWANCE OF ANY CLAIM.**

**YOU SHOULD NOT ASSUME THAT A VOTE FOR OR AGAINST THE PLAN WILL HAVE ANY AFFECT OF THE STATUS OF YOUR CLAIM. IF ANYONE SUGGESTS THAT THE STATUS OF YOUR CLAIM MAY BE AFFECTED BY YOUR VOTE, YOU SHOULD REPORT SUCH INCIDENT TO COUNSEL FOR THE PLAN PROPONENTS IMMEDIATELY AS ANY SUCH SUGGESTION MAY VIOLATE TITLE 18.**

## **2.7 SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE**

### **2.7.1 Bankruptcy Filing and First-Day Relief.**

On April 13, 2016, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Bankruptcy Court held a first-day hearing on April 19, 2016. Relief granted at the first-day hearing included joint administration of the Debtors' bankruptcy cases, initial procedures for adversary claims, authority to pay certain pre-petition wages of employees, continued use of cash management systems, and the granting of several other motions.

### **2.7.2 Retention of Professionals.**

The Debtors retained Christian, Smith & Jewell, LLP as their bankruptcy counsel in these cases on an hourly fee basis. Kristin Rhame was substituted as counsel for the Debtors postpetition. As of the filing of this Joint Disclosure Statement, the Debtors have not hired any other professionals in this case.

### **2.7.3 Claims Bar Date.**

The deadline to file proofs of claim in these cases was September 19, 2016.

### **2.7.4**

The Debtors have filed a Motion To Convert this case to a case under Chapter 7 liquidation.

## **ARTICLE 3 OVERVIEW OF PLAN**

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

An overview of the Plan is set forth below. This overview is qualified in its entirety by reference to the Plan. If the Bankruptcy Court confirms the Plan and, in the absence of any applicable stay, and all other conditions set forth in the Plan are satisfied, the Plan will take effect on the Effective Date.

Under the Plan, all remaining assets and rights of the Debtors shall vest in Aztec Oil & Gas, Inc., with all litigation claims then being transferred to the Litigation Trust. Aztec Oil & Gas, Inc., shall continue in existence and shall manage the transferred assets and rights. All other entities shall be dissolved. The Litigation Trust shall investigate and prosecute claims for the benefit of the unsecured claims of all entities, pro-rata.

**ARTICLE 4**  
**TREATMENT OF CLAIMS AND EQUITY INTERESTS PURSUANT TO THE PLAN**

**4.1 ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS**

In accordance with § 1123(a)(1) of the Bankruptcy Code, certain Administrative Claims and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in this Article III. These unclassified Claims are treated as follows.

**4.1.1 Administrative Claims.** Allowed Administrative Claims arising under 11 U.S.C. § 503(b), including Cure Costs against the Debtors will be paid in Cash and in full by the Debtor on the later of (i) the Distribution Date, (ii) the date on which such Administrative Claim becomes an Allowed Claim; or (iii) such other date as the Reorganized Debtor and the holder of the Allowed Administrative shall agree. Allowed Administrative Claims that are not secured by a valid, perfected, post-petition Lien are not entitled to post-petition interest or legal fees and expenses.

**4.1.2 Priority Tax Claims.** Priority Tax Claims will be paid in Cash and in full by the Reorganized Debtor on the later of (i) the forty-five (45) days after the Effective Date, (ii) the date on which such Priority Tax Claim becomes an Allowed Claim; or (iii) such other date as the Reorganized Debtor and the holder of the Allowed Priority Tax Claim shall agree.

1. *Administrative Expenses against All Debtors*

Administrative expenses are costs or expenses of administering the Debtors chapter 11 case which are allowed under § 507(a)(2) of the Code. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtors estimated administrative expenses, and their proposed treatment under the Plan:

Type	Estimated Amount	Proposed Treatment
Expenses Arising in the Ordinary Course of Business After the Petition Date	\$0	Paid in full on the effective date of the Plan, or according to terms of obligation if later
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date	\$0	Paid in full on the effective date of the Plan, or according to terms of obligation if later
Professional Fees, as approved by the Court.	\$15,000.00	Paid in full on the effective date of the Plan, or according to separate written agreement, or within thirty (30) days of such claim is allowed by Court Order, whichever is later.

Clerks Office Fees	\$0	Paid in full on the effective date of the Plan
Other administrative expenses	Unknown	Paid in full on the effective date of the Plan or according to separate written agreement
Office of the U.S. Trustee Fees	4 <sup>th</sup> Quarterly Fees	Paid in full on the effective date of the Plan
<b>TOTAL</b>	<b>\$15,000.00</b>	

## 2. Priority Tax Claims

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief. Four (4) of the Debtors (Aztec Oil & Gas, Inc., Aztec Energy, LLC, Aztec Operating Company, and Aztec Drilling & Operating, LLC) have late fees owed to the Internal Revenue Service totaling \$2,800.00. It is estimated that the Aztec Limited Partnerships have no priority tax claims.

### a. Priority Tax Claims against Aztec Oil & Gas, Inc.

The following chart lists Debtor Aztec Oil & Gas, Inc.'s estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Description (name and type of tax)	POC Number (if filed)	Amount Claimed	Date(s) of Assessment	Estimate Amount Owed	Treatment
Clay CAD  <i>Ad Valorem Taxes</i>	1	\$5.11	2015	\$0  <i>Debtors do not own nor have ever owned these wells. Mistaken Filing</i>	\$0
Harris County Appraisal District  <i>Ad Valorem Taxes</i>	2	\$1,136.00	2016	\$0  <i>Estimate by HCAD on property sold during 2015.</i>	Allowed claim (if any) will be paid in full on the effective date of the Plan
IRS  <i>Federal Income Taxes</i>	3	\$700.00		\$700	Allowed claim will be paid in full on the effective date of the Plan or pursuant to a separate written

					agreement
Callahan County  <i>ISD Taxes</i>	5	\$131.43	2015	\$0	\$0  Owed by owner Zeigler-Peru pursuant to written settlement agreement

*b. Priority Tax Claims against Aztec Drilling & Operating, Inc.*

The following chart lists Debtor Aztec Drilling & Operating, Inc.'s estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

<b>Description (name and type of tax)</b>	<b>POC Number (if filed)</b>	<b>Amount Claimed</b>	<b>Date(s) of Assessment</b>	<b>Estimate Amount Owed</b>	<b>Treatment</b>
IRS  <i>Federal Income Taxes</i>	1	\$700		\$700	Allowed claim will be paid in full on the effective date of the Plan or pursuant to a separate written agreement
Coleman County  <i>Ad Valorem Taxes</i>	2	\$43.83		\$43.83	Paid in full as of effective date of Plan
Texas Comptroller  <i>Franchise Taxes</i>	3	\$7,000.00		\$50.00	Debtor has gross receipts below the franchise tax threshold and estimates the payment of a \$50.00 late fee

## **4.2 Classes of Claims and Equity Interests**

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

### **4.2.1 Secured Claims**

Allowed Secured Claims are claims secured by property of the Debtors' bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the



collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be classified as a general unsecured claim.

Under the Plan, all Secured Claims will retain their rights in their collateral, and will be paid over 48 months, with 6% interest. It is anticipated that there will be no secured claims. Secured Claims under the Plan are impaired, and entitled to vote.

The following chart lists all classes containing Debtors secured prepetition claims and their proposed treatment under the Plan:

<b>Class #</b>	<b><u>Description</u></b>	<b>Insider? (Yes or No)</b>	<b>Impairment</b>	<b>Treatment</b>
1	<p><i>Secured claim of:</i>  <b>Creditsuisse, Ltd.</b>  <u>Collateral description:</u>            60% of the 30% Partnership Interest Of Aztec Oil &amp; Gas, Inc. in each of the Debtor Partnerships    <u>Allowed Secured Amount =</u>            \$0  <u>Priority of lien:</u> To be            _____            Determined/Disputed</p>	No	Impaired	To be determined through Adversary No. 16-03106

#### **4.2.2** *Priority Unsecured Claims*

Certain priority claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

The following chart lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (a)(7) of the Code and their proposed treatment under the Plan:

<b>Class #</b>	<b>Description</b>	<b>Impairment</b>	<b>Treatment</b>
2	Priority unsecured claim pursuant to Section 507  Total amt of claims = 0	Unimpaired	Not Applicable

#### **4.2.3** *General Unsecured Claims*

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code

Under the Plan, each unsecured creditor of the Debtors shall receive a beneficial interest in the Litigation Trust, and will receive the net proceeds of the Litigation Trust pro-rata. The Plan and the Litigation Trust Agreement should be consulted for details.

The following chart identifies the Plans proposed treatment of Class 3 which contains general unsecured claims against the Debtor:

<b>Class #</b>	<b>Description</b>	<b>Impairment</b>	<b>Treatment</b>
3	General Unsecured Class	Impaired	Distributed by Litigation Trustee via Available Cash Pro Rata to holders of allowed general unsecured claims

#### **4.2.4** *Class of Equity Interest Holders*

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company (“LLC”), the equity interest holders are the members.

Pursuant to the Plan, Equity in Aztec Oil & Gas shall retain their interest. All other equity interest and partnership interest shall be cancelled. Existing warrants of Aztec Oil & Gas, Inc. shall not become exercisable unless, and until all unsecured creditors have been paid in full, or unless such exercise reduces a claim against the reorganized debtor dollar for dollar.. Under the Plan, Equity is unimpaired, and is not entitled to vote.

The following chart sets forth the Plans proposed treatment of the class of equity interest holders:

Class #	Description	Impairment	Treatment
4	Equity interest holders	Unimpaired	All equity interests in the Debtors shall retain their interests.

### 4.3 *Classified Claims Against and Interests in the Debtors*

The Claims against and Interests in the Debtors are classified as follows:

#### **Aztec Oil & Gas, Inc.**

**4.3.1 Class A1: Secured Claim of Creditsuisse Against Aztec Oil & Gas, Inc.** Class A1 is comprised of all Allowed Secured Claims against Aztec Oil & Gas, Inc., subject to the outcome in Adversary Proceeding 16-03106.

**4.3.2 Class A2: Priority Non-Tax Claims Against Aztec Oil & Gas, Inc.** Class A2 is comprised of all Allowed Priority Non-Tax Claims against Aztec Oil & Gas, Inc.

**4.3.3 Class A3: General Unsecured Claims Against Aztec Oil & Gas, Inc.** Class A3 is comprised of all Allowed General Unsecured Claims against Aztec Oil & Gas, Inc.

**4.3.4 Class A4: Interests in Aztec Oil & Gas, Inc.** Class A4 is comprised of all Allowed Interests in Aztec Oil & Gas, Inc.

#### **Aztec Drilling & Operating, LLC.**

**4.3.4 Class B1: Miscellaneous Secured Claim Against Aztec Drilling & Operating, LLC.** Class B1 is comprised of all Allowed Secured Claims against Aztec Drilling & Operating, LLC.

**4.3.5 Class B2: Priority Non-Tax Claims Against Aztec Drilling & Operating, LLC.** Class B2 is comprised of all Allowed Priority Non-Tax Claims against Aztec Drilling & Operating, LLC.

**4.3.6 Class B3: General Unsecured Claims Against Aztec Drilling & Operating, LLC.** Class B3 is comprised of all Allowed General Unsecured Claims against Aztec Drilling & Operating, LLC.

**4.3.7 Class B4: Interests in Aztec Drilling & Operating, LLC.** Class B4 is comprised of all

Allowed Interests in Aztec Drilling & Operating, LLC.

**Aztec Operating Company.**

- 4.3.8 **Class C1: Miscellaneous Secured Claim Against Aztec Operating Company.** Class C1 is comprised of all Allowed Secured Claims against Aztec Operating Company.
- 4.3.9 **Class C2: Priority Non-Tax Claims Against Aztec Operating Company.** Class C2 is comprised of all Allowed Priority Non-Tax Claims against Aztec Operating Company.
- 4.3.10 **Class C3: General Unsecured Claims Against Aztec Operating Company** Class C3 is comprised of all Allowed General Unsecured Claims against Aztec Operating Company
- 4.3.11 **Class C4: Interests in Aztec Aztec Operating Company.** Class C4 is comprised of all Allowed Interests in Aztec Operating Company.

**Aztec Energy, LLC.**

- 4.3.12 **Class D1: Miscellaneous Secured Claim Against Aztec Energy, LLC.** Class D1 is comprised of all Allowed Secured Claims against Aztec Energy, LLC.
- 4.3.13 **Class D2: Priority Non-Tax Claims Against Aztec Energy, LLC.** Class D2 is comprised of all Allowed Priority Non-Tax Claims against Aztec Energy, LLC.
- 4.3.14 **Class D3: General Unsecured Claims Against Aztec Energy, LLC** .Class D3 is comprised of all Allowed General Unsecured Claims against Aztec Energy, LLC.
- 4.3.11 **Class D4: Interests in Aztec Energy, LLC.** Class D4 is comprised of all Allowed Interests in Aztec Energy, LLC.

**Aztec Limited Partnership Debtors**

- 4.3.15 **Class E1: Miscellaneous Secured Claim Against the Aztec Limited Partnership Debtors.** Class E1 is comprised of all Allowed Secured Claims against the Aztec Limited Partnership Debtors.
- 4.3.16 **Class E2: Priority Non-Tax Claims Against Aztec Limited Partnership Debtors.** Class E2 is comprised of all Allowed Priority Non-Tax Claims against the Aztec Limited Partnership Debtors.
- 4.3.17 **Class E3: General Unsecured Claims Against Aztec Limited Partnership Debtors.** Class E3 is comprised of all Allowed General Unsecured Claims against the Aztec Limited Partnership Debtors.
- 4.3.18 **Class E4: Interests in Aztec Limited Partnership Debtors.** Class E4 is comprised of all Allowed Interests in the Aztec Limited Partnership Debtors.

**ARTICLE 5**

**IMPAIRMENT OF CLASSES AND RESOLUTION OF CLAIM CONTROVERSIES**

**5.1 UNIMPAIRED CLASSES**

Holders of Claims that are in unimpaired Classes are deemed to have accepted the proposed Plan and are not entitled to vote on the Plan. The following Classes of Claims are not impaired under the Plan:

- 5.1.1** Classes A2, B2, C2, D2, and E2– Priority Non-Tax Claims against each Debtor, and Class A4 – Equity Interests of Aztec Oil & Gas, Inc.

## **5.2 IMPAIRED CLASSES**

Only holders of Claims that are in impaired Classes may vote on the Plan. The following Classes of Claims and Interests are impaired under the Debtor’s Plan:

- 5.2.1** Classes A1, B1, C1, D1, and E1 – Miscellaneous Secured Claims against each Debtor
- 5.2.2** Classes A3, B3, C3, D3, and E3,– General Unsecured Claims against each Debtor
- 5.2.3** Classes B4, C4, D4, and E4 – Interests in each Debtor other than Aztec Oil & Gas, Inc.

## **5.3 CONTROVERSY CONCERNING CLASSIFICATION, IMPAIRMENT OR VOTING RIGHTS**

In the event a controversy or dispute should arise involving issues related to the classification, impairment or voting rights of any Creditor or Interest Holder under the Plan, prior to the Confirmation Date, the Bankruptcy Court may, after notice and a hearing, determine such controversy. Without limiting the foregoing, the Bankruptcy Court may estimate for voting purposes the amount of any contingent or unliquidated Claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the Chapter 11 Cases. In addition, the Bankruptcy Court may in accordance with § 506(b) of the Bankruptcy Code conduct valuation hearings to determine the Allowed Amount of any Secured Claim.

## **ARTICLE 6 MEANS OF IMPLEMENTING THE PLAN**

### **6.1 CREATION OF LITIGATION TRUST**

On the Effective Date, the Litigation Trust shall be created. The Litigation Trust shall be governed by the Litigation Trust Agreement, the Plan and the Confirmation Order. The terms of the employment of the Litigation Trustee shall be set forth in the Litigation Trust Agreement or the Confirmation Order. On the Effective Date, the Debtors will transfer all assets to Aztec Oil & Gas, Inc. Aztec Oil & Gas shall then transfer all claims and causes of action to the Litigation Trust. All transfers to the Litigation Trust shall be free and clear of all liens, claims, interests and encumbrances. Except as specifically set forth herein, holders of Allowed Claims shall look solely to the Litigation Trust for the satisfaction of their Claims. For federal income tax purposes, the transfer of the identified assets to the Litigation Trust will be deemed to be a transfer to the holders of Allowed Claims (who are the Litigation Trust beneficiaries), followed by a deemed transfer by such beneficiaries to the Litigation Trust.

## **ARTICLE 7 EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

### **7.1 REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**



All executory contracts and unexpired leases are rejected, unless otherwise dealt with by the Plan or the Confirmation Order, or any other Order of the Court entered prior to the Effective Date, or which is the subject of a motion to assume pending on the Effective Date.

If you object to the rejection of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

*The Deadline for Filing a Proof of Claim Based on a Claim Arising from the Rejection of a Lease or Contract Is thirty (30) days after the Effective Date or rejection, whichever is later.* Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.

**ARTICLE 8**  
**CLAIM AND INTEREST OBJECTION PROCEDURES, TREATMENT AND PROCEDURE FOR**  
**ASSERTING CLAIMS**

**8.1 OBJECTION PROCESS**

All parties in interest may object to a claim asserted in this bankruptcy case. As soon as practicable, but in no event later than thirty (30) days after the Confirmation Date, unless extended by order of the Bankruptcy Court for cause, objections to Claims shall be filed with the Bankruptcy Court and served upon the Holders of each of the Claims to which objections are made.

**8.2 ADVERSARIES**

The Debtors claims, rights, and defenses maintained in each pending adversary shall be transferred to the Litigation Trustee effective on the date of confirmation.

**8.3 FILING OF CLAIMS AND CAUSES OF ACTION.**

The Litigation Trustee shall have the **exclusiv**e right to file, settle, and prosecute any Claims and Causes of Action on behalf of the Litigation Trust, including all Avoidance Actions and derivative Causes of Action.

**ARTICLE 9**  
**EFFECT OF CONFIRMATION**

**9.1 LEGALLY BINDING EFFECT**

The provisions of this Plan shall bind all Creditors and Interest Holders, whether or not they accept this Plan. On and after the Effective Date, all holders of Claims shall be precluded and forever enjoined from asserting or otherwise pursuing any (i) Claim against the Debtors, the Litigation Trust or

their respective assets or properties based on any transaction or other activity of any kind that occurred prior to the Confirmation Date except as permitted under the Plan; and (ii) derivative claims, including claims against third parties asserting alter ego claims, fraudulent transfer claims, or any type of successor liability based on acts or omissions of the Debtors.

## **9.2 LIMITED PROTECTION OF CERTAIN PARTIES IN INTEREST**

The Plan does not provide for any discharge of any claim against any officer, director, professional or other entity of than the Debtors.

## **9.3 INDEMNIFICATION**

The Plan does not provide for the future indemnification of any party or entity.

## **9.4 RESERVATION AND RETENTION OF CLAIMS AND RIGHTS**

Confirmation of this Plan effects no settlement, compromise, waiver or release of any Claim, Cause of Action, Right of Action or claim for relief unless this Plan or the Confirmation Order specifically and unambiguously so provides. The non-disclosure or non-discussion of any particular Claim, Cause of Action, Right of Action or claim for relief is not and shall not be construed as a settlement, compromise, waiver, or release of any such Claim, Cause of Action, Right of Action or claim for relief.

## **9.5 MODIFICATION OF PLAN**

The Plan Proponents may modify their Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or re-voting on the Plan.

The Plan Proponents may also seek to modify their Plan at any time after confirmation only if (1) the Plan has not been substantially consummated *and* (2) the Court authorizes the proposed modifications after notice and a hearing.

# **ARTICLE 10**

## **CONFIRMATION REQUIREMENTS AND PROCEDURES**

### **10.1 STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Bankruptcy Code's requirements for confirmation of the Plan have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. As set forth in § 1129 of the Bankruptcy Code, these requirements are as follows:

1. The Plan complies with the applicable provisions of the Bankruptcy Code.
2. The proponents of the Plan comply with the applicable provisions of the Bankruptcy Code.
3. The Plan has been proposed in good faith and not by any means forbidden by law.
4. Any payment made or to be made by the Plan proponent, or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in

connection with the cases, or in connection with the Plan and incident to the cases, has been approved by, or is subject to the approval of, the Court as reasonable.

5. The proponents of the Plan have disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the Debtor, an affiliate of the Debtor participating in a joint Plan with the Debtor, or a successor to the Debtor under the Plan; and the appointment to, or continuance in, such office of such individual, is consistent with the interests of Creditors and with public policy; and the proponent of the Plan have disclosed the identity of any insider that will be employed or retained by the Debtor, and the nature of any compensation for such insider.

6. Any governmental regulatory commission with jurisdiction, after confirmation of the Plan, over the rates of the Debtor, has approved any rate change provided for in the Plan, or such rate change is expressly conditioned on such approval.

7. With respect to each class of impaired claims or equity interests:

(a) each holder of a claim or interest of such class:

(i) has accepted the Plan; or

(ii) will receive or retain under the Plan on account of such claim or interest property of a value, as of the effective date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date; or

(b) if § 1111(b)(2) of the Bankruptcy Code applies to the claims of such class, the holder of a claim of such class will receive or retain under the Plan on account of such claim property of a value, as of the effective date of the Plan, that is not less than the value of such holder's interest in the estate's interest in the property that secured such claims.

8. With respect to each class of claims or interests:

(a) such class has accepted the Plan; or

(b) such class is not impaired under the Plan;

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the Plan provides that:

(a) with respect to a claim of a kind specified in § 507(a)(1) or § 507(a)(2) of the Bankruptcy Code, on the effective date of the Plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

(b) with respect to a class of claims of a kind specified in §§ 507(a)(3), 507(a)(4), 507(a)(5) or 507(a)(6) of the Bankruptcy Code, each holder of a claim of such class will receive:

(i) if such class has accepted the Plan, deferred cash payments of a value, as of the effective date of the Plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the Plan, cash on the effective date of the Plan equal to the allowed amount of such claim; and

(c) with respect to a claim of a kind specified in § 507(a)(8) of the Bankruptcy Code, the holder of a claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the Plan, equal to the allowed amount of such claim.

10. If a class is impaired under the Plan, at least one class of claims that is impaired has accepted the Plan, determined without including any acceptance of the Plan by any insider.

11. Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan.

The Plan Proponents believe that their Plan satisfies all the statutory requirements of Chapter 11 of the Bankruptcy Code, that the Debtors have complied or will have complied with all of the requirements of Chapter 11, and that the proposal of the Plan is made in good faith.

The Plan Proponents further believe that the holders of all Claims impaired under the Plan will receive payments or distributions under the Plan having a present value as of the Effective Date in amounts not less than the amounts likely to be received by such holders if the Debtors were liquidated in a case under Chapter 7 of the Bankruptcy Code.

Finally, the Plan Proponents do not believe that the confirmation of the Plan will likely be followed by the need for further financial reorganization of the Debtors.

12. If all impaired classes entitled to vote, vote to accept the Plan, and the above requirements are met, the Court may confirm the proposed plan. However, if an impaired class entitled to vote does not vote to accept the plan, section 1129(b) of the Bankruptcy Code must be met. Section 1129(b) states that a plan can be confirmed if all other requirements of Section 1129(a), other than Section 1129(a)(8), are met and (1) the plan is fair and equitable and (2) does not unfairly discriminate with respect to each class of impaired claims or interests that has not accepted the plan. 11 U.S.C. § 1129(b). A plan is fair and equitable to unsecured creditors only if: (1) the allowed unsecured claim is paid in full on the effective date, or (2) the holder of any claim or interest that is junior to the claims or interests of unsecured creditors will not receive or retain under the plan any property “on account of such claim or interest.” Commonly referred to as the absolute priority rule.

13. The Plan Proponents believe that they will be able to secure sufficient votes in favor of the Plan to obtain confirmation under section 1129(a), thereby avoiding the requirements of the absolute priority rule.

14. If the impaired classes do not all vote in favor of the Proposed Plan, modification of the Plan will be required to comply with the requirements of 1129(b).

## **10.2 BALLOTS AND VOTING DEADLINE**

See the Order Conditionally Approving The Disclosure Statement And Setting Deadlines.

### **10.3 CREDITORS ENTITLED TO VOTE**

Any Creditor whose Claim is impaired under the Plan is entitled to vote, if either (i) the Debtors have scheduled its Claim on its Statement of Liabilities and such Claim is not scheduled as disputed, contingent or unliquidated, or (ii) such Creditor has filed a Proof of Claim on or before the last date set by the Bankruptcy Court for filing Proofs of Claim and no objection has been filed to such Claim.

Holders of Disputed Claims are not entitled to vote on the Plan. Any Claim to which an objection has been filed and remains pending, is not entitled to vote unless the Bankruptcy Court, upon motion by the Creditor who holds a Disputed Claim, temporarily allows the Claim in an amount that it deems proper for accepting or rejecting the Plan. Any such motion must be heard and determined by the Bankruptcy Court before the date established by the Bankruptcy Court as the final date to vote on the Plan. In addition, a vote may be disregarded if the Bankruptcy Court determines that the acceptance or rejection of the Plan by the Creditor was not solicited or obtained in good faith or according to the provisions of the Bankruptcy Code.

Classes of Claims that are not impaired are deemed to have accepted a plan of reorganization pursuant to § 1126(f) and, therefore, are not entitled to vote on a plan. Pursuant to § 1126, only classes of claims or interests that are “impaired” are entitled to vote on a plan of reorganization. Generally, a claim is impaired if the plan of reorganization alters the legal, equitable, or contractual rights to which the holder of such claim is otherwise entitled.

### **10.4 VOTING PROCEDURES**

All questions as to the validity, form, eligibility (including time of receipt), acceptance, revocation, or withdrawal of Ballots will be determined by the Bankruptcy Court.

### **10.5 VOTES NECESSARY TO CONFIRM THE PLAN**

The Bankruptcy Code defines acceptance of a chapter 11 plan by a class of Claims as the acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half in number of the allowed Claims of the class actually voting to accept or reject the proposed plan.

The Bankruptcy Code defines acceptance of a chapter 11 plan by a class of Interests as the acceptance by holders of at least two-thirds (2/3) in amount of the allowed Interests in the class actually voting to accept or reject the proposed plan.

### **10.6 CRAMDOWN**

If the Plan is not accepted by all classes of impaired Creditors, the Plan Proponents reserve the right to withdraw the Plan. If the Plan is accepted by one or more Classes of impaired Creditors, the Plan Proponents reserve the right to request the Bankruptcy Court to approve the Plan under 11 U.S.C. § 1129(b).

**THE PLAN PROPONENTS STRONGLY URGE ALL IMPAIRED CREDITORS TO VOTE TO ACCEPT THE PLAN.**

### **10.7 LIQUIDATION ANALYSIS**

If the Plan is not confirmed, the Debtors or another party in interest in the case could attempt to formulate and propose a different plan or plans. Such plans might, theoretically, involve some other form of reorganization or liquidation of the Debtors' operations and assets. Any alternative plans, however, would likely result in additional administrative expenses to the estate and would provide little or no benefit. The Plan is straightforward, meets the requirements of § 1129 and provides the best outcome for Creditors.

#### **10.8 LIQUIDATION UNDER CHAPTER 7**

The Plan Proponents do not believe the case should be converted to Chapter 7. Conversion to Chapter 7 would result in additional administrative expenses attributable to statutory trustee fees and professional fees for the trustee's professionals.

### **ARTICLE 11 COMPROMISES AND SETTLEMENTS**

#### **11.1 EFFECT OF CONFIRMATION ORDER**

There are no known compromises or settlements that would be affected by confirmation of the Plan.

### **ARTICLE 12 CAUSES OF ACTION**

#### **12.1 PREFERENCES**

Under the Bankruptcy Code, the Debtors may recover certain preferential transfers of property, including cash, made while insolvent during the 90 days immediately prior to the filing of the bankruptcy petition with respect to pre-existing debts, to the extent the transferee received more than it would have in respect of the pre-existing debt had the Debtors been liquidated under Chapter 7 of the Bankruptcy Code. In the case of "insiders," the Bankruptcy Code provides for a one-year preference period. There are certain defenses to such recoveries. Transfers made in the ordinary course of the Debtors' and transferee's business according to the ordinary business terms in respect of debts less than 90 days before the filing of a bankruptcy are not recoverable. Additionally, if the transferee extended credit subsequent to the transfer (and prior to the commencement of the bankruptcy case), such extension of credit may constitute a defense to recovery, to the extent of any new value, against an otherwise recoverable transfer of property.

If a transfer is recovered by the Litigation Trustee, the transferee has a General Unsecured Claim to the extent of the recovery. The Litigation Trustee reserve the right to bring preferential transfer claims against the parties identified as receiving transfers within 90 days, or in the case of insiders, within 1 year of the Petition Date.

#### **12.2 FRAUDULENT TRANSFERS**

Under the Bankruptcy Code and various state laws, the Debtors may recover certain transfers of property, including the grant of a security interest in property, made while insolvent or which rendered the Debtors insolvent. The Litigation Trustee reserves the right to bring fraudulent conveyance claims.



The Plan Proponents have not been provided sufficient access to the books and records of the Debtors, and have therefore not conducted a detailed analysis of potential recoveries under Chapter 5 of the Bankruptcy Code but believe that potential claims may exist. A list of the known payments is set forth in the Debtors' statements of financial affairs, which are incorporated herein. All avoidance actions and rights pursuant to §§ 506(c), 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552(b), 553 and 724 of the Bankruptcy Code and all causes of action under state, federal or other applicable law shall be retained and may be prosecuted or settled by the Litigation Trustee in his/her sole discretion. To the extent that material amounts are recovered, it will enhance the returns to the holders of Unsecured Claims.

### **12.3 OTHER CAUSES OF ACTION**

As set forth in the Plan, the Plan Proponents believe that certain causes of action exist that will be evaluated, pursued and resolved by the Litigation Trustee in his/her sole discretion. To the extent known, the claims and causes of action are listed on the attached page.

## **ARTICLE 13** **OTHER PLAN PROVISIONS**

### **13.1 BAR DATE FOR ADMINISTRATIVE CLAIMS**

The last day to file an application for allowance of an Administrative Claim (other than (i) quarterly U.S. Trustee fees and (ii) Professional Fee Claims), shall be 20 days after the Effective Date unless otherwise established by a Final Order.

No Administrative Claim, other than Professional Fees and United States Trustee fees, will be paid unless the holder of such Administrative Claim has filed an application for payment of such Administrative Claim on or before the Administrative Claim Bar Date. Upon the filing of any application for payment, the entity seeking payment of an Administrative Claim shall provide notice by United States Mail in accordance with the Bankruptcy Rules. Any Administrative Claim, other than Professional Fees and United States Trustee fees, not filed in accordance with this section shall be barred.

### **13.2 OBJECTIONS TO ADMINISTRATIVE CLAIMS**

Objections to Applications for payment of Administrative Claims may be filed by any party in interest. In order to be considered, such objections must be filed on or before the 21<sup>st</sup> day following the date on which the application was filed. Any objections will be determined by the Bankruptcy Court.

### **13.3 PAYMENTS OF PROFESSIONAL CLAIMS**

Each holder of an Allowed Professional Fee Claim shall be paid in respect of such Professional Fee Claim in Cash, in full, on the Effective Date, or, if such Claim has not been finally approved by the Bankruptcy Court on or before the Effective Date, promptly after Bankruptcy Court approval of the Professional Fee Claim by a Final Order. Final fee applications for any Professional Fee Claim that has not been finally approved as of the Effective Date shall be filed within twenty (20) days of the Effective Date and such applications and objections thereto (if any) shall be filed in accordance with and comply in all respects with the Bankruptcy Code, the Bankruptcy Rules, applicable local rules, and the Fee Procedures Order. The failure to file an application by the foregoing deadline shall constitute a waiver of all such Professional Fee Claim.

#### **13.4 PAYMENT OF UNITED STATES TRUSTEE FEES**

Within thirty (30) days of the date that such payments are due, the Debtor shall pay all amounts owing to the United States Trustee as fees and costs imposed in connection with these Chapter 11 Cases.

#### **13.5 EMPLOYEE BENEFIT PLANS**

Thirty (30) days after to the Effective Date all Employee Benefit Plans shall be terminated in accordance with the applicable provisions of the state and federal law.

#### **13.6 TIMING OF DISTRIBUTIONS**

Unless otherwise specified herein, all payments and Distributions shall be made on a Payment Date determined by the Litigation Trustee. When a provision of this Plan requires that a payment shall be made on a certain date, such payment may be made (i) at any time prior to the date on which such payment is due; (ii) in more frequent intervals than set forth in such provision of the Plan; or (iii) not more than 14 days after the date any such payment is due. Notwithstanding the foregoing, no payment shall be considered late or otherwise result in a default unless the Litigation Trustee has failed to make the payment after the passage of 30 days following the receipt by the Litigation Trustee of a written notice advising that a payment has not been received in accordance with the times set forth in this paragraph.

#### **13.7 WITHDRAWAL OF PLAN**

The Plan Proponents reserve the right to withdraw their Plan at any time prior to the Confirmation Date. If a Plan is withdrawn prior to the Confirmation Date, or if the Confirmation Date or the Effective Date does not occur, then the proposed plans shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute an admission, waiver or release of any Claims by or against the Debtors, the Estates or any other person, or to prejudice in any manner the rights of the Debtors, the Estates or any person in any further Legal Proceedings involving the Debtors.

#### **13.8 SUBSTANTIAL CONSUMMATION**

On the Effective Date, the Plan shall be deemed to be substantially consummated under Bankruptcy Code §§ 1101 and 1127(b).

#### **13.9 CONFLICT**

Except as otherwise provided in the Plan, to the extent the Confirmation Order and/or this Plan are inconsistent with the Disclosure Statement, any other agreement entered into between the Debtors and any third party, the Plan controls the Disclosure Statement and any such agreements, and the Confirmation Order controls the Plan. To the extent that the Plan or the Confirmation Order conflicts with the Trust Agreement, first, the Plan shall control the Trust Agreement and the Confirmation Order shall control the Plan.

#### **13.10 SEVERABILITY**

The provisions of the confirmed Plan shall not be severable unless such severance is agreed to by the Plan Proponents and such severance would constitute a permissible modification of the Plan pursuant to § 1127 of the Bankruptcy Code.

### 13.11 SETOFFS

The Litigation Trustee may, but shall not be required to, set off against any Claims and the payments or Distributions to be made pursuant to the Plan in respect of such Claims, any and all debts, liabilities and claims of every type and nature whatsoever that the Estates or the Litigation Trust may have against the Holder of any Claim, but neither the failure to do so nor the Allowance of any such Claims, whether pursuant to the confirmed Plan or otherwise, shall constitute a waiver or release by the Litigation Trustee or the Litigation Trust of any such claims they may have against such Holder of any Claim, and all such claims shall be reserved for and retained by the Litigation Trustee.

### 13.12 OTHER CONSIDERATIONS

There are no other considerations known by the Plan Proponents.

### 13.13 RISK FACTORS

There are certain risks inherent in the liquidation and administration process under the Bankruptcy Code. If certain standards set forth in the Bankruptcy Code are not met, the Bankruptcy Court will not confirm a Plan even if Creditors and Interest holders accept a Plan. Although the Plan Proponents believe that their respective Plan meets such standards, there can be no assurance that the Bankruptcy Court will reach the same conclusion. If the Bankruptcy Court were to determine that such requirements were not met, it could require the Plan Proponents to re-solicit acceptances, which could delay and/or jeopardize confirmation of a Plan. The Plan Proponents believe that the solicitation of votes on the Plan will comply with § 1126(b) and that the Bankruptcy Court will confirm a Plan. The Plan Proponents cannot, however, provide assurance that modifications of the Plan will not be required to obtain confirmation of the Plan, or that such modifications will not require a re-solicitation of acceptances.

### 13.14 TAX CONSIDERATIONS

#### 13.1.1 Importance of Obtaining Professional Assistance.

**YOU ARE HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT, THE PLAN OR ANY RELATED MATERIALS, IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED BY YOU, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON YOU UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; AND (B) ANY SUCH DISCUSSIONS ARE BEING USED ONLY IN CONNECTION WITH SATISFYING THE REQUIREMENTS IMPOSED UNDER THE BANKRUPTCY CODE FOR DISCLOSURE STATEMENTS, AND (C) YOU SHOULD SEEK ADVICE FROM AN INDEPENDENT TAX ADVISOR WITH RESPECT TO YOUR FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES BASED ON YOUR PARTICULAR CIRCUMSTANCES.**

#### PLAN PROPONENTS:

/s/ Franklin Fisher, Jr.  
Franklin Fisher, Jr.

/s/ Robert Sonfield, Trustee  
The Livingston Growth Fund Trust  
By: Robert Sonfield, Trustee