

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**IN RE :** §  
§ **Chapter 11**  
**COWBOYS FAR WEST, LTD.** §  
§ **Case No. 16-51419**  
**Debtor.** §  
§

**DISCLOSURE STATEMENT FOR BUSINESS PROPERTY  
LENDING, INC.'S PLAN OF LIQUIDATION  
FOR COWBOYS FAR WEST, LTD.**

**THIS DISCLOSURE STATEMENT IS SUBMITTED TO ALL CREDITORS AND INTEREST HOLDERS OF THE DEBTOR ENTITLED TO VOTE ON BUSINESS PROPERTY LENDING, INC.'S PLAN OF LIQUIDATION FOR THE DEBTOR, HEREIN DESCRIBED AND 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 PLAN WITH CARE.**

**[ON \_\_\_\_\_, 2016, THE BANKRUPTCY COURT CONDITIONALLY APPROVED THIS DISCLOSURE STATEMENT AS CONTAINING ADEQUATE INFORMATION UNDER SECTION 1125(b) OF THE BANKRUPTCY CODE. SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN HEREIN DESCRIBED IS BEING SOUGHT FROM CREDITORS AND INTEREST HOLDERS WHOSE CLAIMS AGAINST, AND INTERESTS IN, THE DEBTOR ARE IMPAIRED UNDER THE PLAN. CREDITORS AND INTEREST HOLDERS ENTITLED TO VOTE ON THE PLAN ARE URGED TO VOTE IN FAVOR OF THE PLAN AND TO RETURN THE COMPLETED BALLOT INCLUDED WITH THIS DISCLOSURE STATEMENT IN THE ACCOMPANYING ENVELOPE ADDRESSED TO PORTER HEDGES LLP, ATTENTION: ERIC ENGLISH, 1000 MAIN STREET, 36th FLOOR, HOUSTON, TEXAS 77002, NOT LATER THAN \_\_\_\_\_, 2016.]**

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**ARTICLE I**  
**INTRODUCTION**

**1.1 General Information Concerning Disclosure Statement and Plan.**

Business Property Lending, Inc. ("BPL" or "Plan Proponent"), a wholly owned subsidiary of EverBank Financial Corporation ("EverBank") and a secured creditor of Cowboys Far West, Ltd. (the "Debtor"), has filed a Plan of Liquidation for Cowboys Far West, Ltd., dated October 25, 2016 (the "Plan"), with the United States Bankruptcy Court for the Western District of Texas (the "Bankruptcy Court"). This Disclosure Statement for BPL's Plan of Liquidation for Cowboys Far West, Ltd. (the "Disclosure Statement") is being submitted for the approval of the Bankruptcy Court for use in connection with the Plan filed against the Debtor pursuant to section 1125 of title 11 of the United States Code (the "Bankruptcy Code").

BPL submits 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 Debtor's known Creditors and Interest Holders entitled to vote on the Plan. The purpose of this Disclosure Statement is to provide adequate information to enable Creditors and Interest Holders who are entitled to vote on the Plan to arrive at a reasonably informed decision in exercising their respective right to vote on the Plan. A copy of the Plan is included with this Disclosure Statement. 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 and Bankruptcy Rules. All section references in this Disclosure Statement are to the Bankruptcy Code unless otherwise indicated.

BPL has proposed the Plan consistent with the provisions of the Bankruptcy Code. The purpose of the Plan is to liquidate the Debtor's assets, and then distribute the proceeds to Creditors in accordance with the Bankruptcy Code. The Debtor's primary asset is valuable real property in San Antonio, Texas, and the Debtor's bankruptcy estate also holds potential fraudulent transfer and preference claims related to an alleged pre-petition restructuring transaction pursuant to which the Debtor incurred substantial obligations and appears to have received little to no benefit. Upon the Closing Date of the Sale, the Debtor will be dissolved.

The Debtor's Monthly Operating Reports, deposition testimony from the Debtor's principal, J. Michael Murphy, and statements of the Debtor's counsel in court hearings all confirm that the Debtor does not have the ability to pay creditors from its operations. However, the value of the Debtor's assets may exceed the amount of non-insider claims. Accordingly, BPL believes that the Plan provides for the maximum recovery available for all Classes of Claims and Equity Interests.

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 Creditors and Interest Holders how various aspects of the Plan affect their respective positions. You are encouraged to consult with your own counsel. Counsel for BPL is available to answer any questions that your counsel may have regarding the Plan and this Disclosure Statement.

**1.2 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 DEBTOR 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 DEBTOR OTHER THAN THAT CONTAINED IN THIS DISCLOSURE STATEMENT, ANY ATTACHMENTS THERETO AND THE PLAN.**

**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, INCLUDING THE DEBTOR'S COURT FILINGS AND IS BELIEVED TO BE RELIABLE. HOWEVER, BPL HAS NOT BEEN ABLE TO INDEPENDENTLY VERIFY EACH AND EVERY STATEMENT CONTAINED HEREIN. ACCORDINGLY, BPL AND ITS PROFESSIONALS CANNOT MAKE ANY REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.**

**IT IS POSSIBLE THAT THE TRANSACTIONS CONTEMPLATED UNDER THE PLAN COULD HAVE NEGATIVE TAX AND OTHER ECONOMIC CONSEQUENCES. BPL MAKES NO REPRESENTATIONS REGARDING THE TAX IMPLICATIONS OF ANY TRANSACTION CONTEMPLATED UNDER THE PLAN. IT IS NOT UNCOMMON FOR PARTIES TO RETAIN THEIR OWN TAX ADVISORS TO ANALYZE THE PLAN. BPL ENCOURAGES ALL PERSONS THAT MIGHT BE AFFECTED TO SEEK INDEPENDENT ADVICE REGARDING THE TAX EFFECTS OF THE PLAN.**

**DISTRIBUTION OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS ANY REPRESENTATION OR WARRANTY AT ALL, EITHER EXPRESS OR IMPLIED, BY BPL OR THEIR PROFESSIONALS THAT THE PLAN IS FREE FROM RISK, THAT THE ACCEPTANCE OF THE PLAN WILL RESULT IN A RISK-FREE LIQUIDATION OF THE DEBTOR'S ASSETS 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 ON THE PLAN. 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.**

### **1.3 Answers to Commonly Asked Questions.**

As part of the BPL's efforts 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 CONTROLS IN CASE OF ANY INCONSISTENCY.**

#### **1.3.1 Who is the Debtor?**

The Debtor, Cowboys Far West, Ltd., is a limited partnership duly organized and existing under the laws of the State of Texas, having an office and principal place of business at 3030 NE Loop 410, San Antonio, Bexar County, Texas 78212.

#### **1.3.2 Who is BPL and why is BPL filing the Plan?**

BPL is the holder of an Allowed Secured Claim in the Debtor's bankruptcy case. BPL is the current holder of a promissory note in the face amount of \$5,000,000, payment of which is secured by a first priority lien on the Debtor's real property, improvements and fixtures. BPL is filing the Plan because it believes that sale of the Debtor's assets and payment of creditors represents the best recovery available under the circumstances. The Debtor's business prospects, and its ability to generate revenues to pay its creditors, is questionable. The Debtor is currently losing money and the sale of the Debtor's assets should yield enough value to pay most, if not all, creditors in full.

#### **1.3.3 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. BPL is proposing to liquidate all of the Debtor's assets. 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.

**1.3.4 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.

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

[On \_\_\_\_ \_\_, 2016, 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 Debtor, 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.]

**1.3.6 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.

**1.3.7 Why is confirmation of the Plan important?**

The Bankruptcy Court’s confirmation of the Plan is a condition to the Debtor carrying out the treatment of Creditors and Interest Holders under the Plan. Unless the Plan is confirmed, and any other conditions to confirmation or to the effectiveness of the Plan are satisfied, the Debtor is 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 the Debtor can begin making payments to pre-petition Creditors.

**1.3.8 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, BPL 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 proponent 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.

### **1.3.9 Is there a Committee in this case?**

No. An official committee of unsecured creditors was not appointed in this case.

### **1.3.10 When is the deadline for returning my ballot?**

[The Bankruptcy Court has directed that, to be counted for voting purposes, your ballot must be received by the BPL's counsel by \_\_\_\_\_, 2016.]

**IT IS IMPORTANT THAT ALL IMPAIRED CREDITORS AND INTEREST HOLDERS VOTE ON THE PLAN. BPL BELIEVES THAT THE PLAN PROVIDES THE BEST POSSIBLE RECOVERY TO CREDITORS AND INTEREST HOLDERS. BPL THEREFORE BELIEVES THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTEREST OF CREDITORS AND INTEREST HOLDERS AND RECOMMEND THAT ALL IMPAIRED CREDITORS AND INTEREST HOLDERS VOTE TO ACCEPT THE PLAN.**

## **ARTICLE II OVERVIEW 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, all other conditions set forth in the Plan are satisfied, the Plan will take effect on the Effective Date.

The Plan provides for the liquidation and sale of the Debtor's assets, including: (1) the land, building, and improvements thereon located at 3030 NE Loop 410, San Antonio, Bexar County, Texas 78218, as further identified in the BPL Deed of Trust; (2) the Debtor's inventory and supplies, including liquor and beer; (3) the Debtor's office furniture and fixtures; (4) the Debtor's office equipment, including all computer equipment, lighting equipment and sound

equipment; (5) all vehicles owned by the Debtor; and (6) all other assets of the Debtor, including, but not limited to causes of action for pre-petition fraudulent transfers and preferences (collectively, the “Property”). In the event the Plan Administrator is unable to successfully sell the Property within thirty (30) days after the Plan’s Effective Date, the Property will be sold at a public auction (the “Auction”) where it will be subject to higher or better bids. The sale proceeds (“Sale Proceeds”) from the Property will be utilized to fund distributions under the Plan as set forth herein.

### **ARTICLE III** **THE DEBTOR**

#### **3.1 The Debtor’s Pre-Petition Business and the Events Leading to Bankruptcy.**

**3.1.1 The Debtor’s Pre-Petition Business.** The Debtor owned and operated the popular country music venue, dancehall and bar known as Cowboys Dancehall (“Cowboys”). Cowboys, a honkytonk, once sat among the most lucrative Bexar County establishments for beer, wine and cocktail sales—ranking 11th out of roughly 980 bars, restaurants and concert halls in alcohol sales in 2015, according to media reports.

**3.1.2 Events Leading to Bankruptcy.** On December 21, 2007, the Debtor executed a promissory note in favor of General Electric Capital Corporation (“GE”) in the original principal amount of \$5,000,000.00 (the “Note”). Among other things, the Deed of Trust conveyed to GE in trust, with power of sale, the land, building, and improvements thereon located at 3030 NE Loop 410, San Antonio, Bexar County, Texas 78218. On or about October 24, 2014, the Note, the Deed of Trust, and all documents executed in connection therewith (the “Loan Documents”) were assigned to BPL.

Shortly after the Debtor assigned the Loan Documents to BPL, the Debtor began to struggle financially. According to media reports, the opening of other popular establishments caused the Debtor to lose market share, which in turn caused falling annual alcohol sales and lower customer attendance. The decrease in annual sales apparently caused BPL to suffer a liquidity shortfall in early 2016. The shortage of cash left the Debtor unable to pay its 2015 ad valorem taxes.

Additionally, over the past several years the Debtor has incurred a number of violations of the Texas Alcoholic Beverage Code. These violations are set forth in a Waiver Order from the Texas Alcoholic Beverage Commission dated June 20, 2016 and include, but are not limited to, instances of serving intoxicated persons, breaches of the peace, serving alcohol to minors, serving alcohol after hours and employees under the influence of drugs and alcohol. The Texas Alcoholic Beverage Commission made formal findings that the Debtor committed certain violations and imposed a \$10,500 fine against the Debtor.

Among other things, the violations of the Texas Alcoholic Beverage Code and the Debtor’s failure to pay ad valorem taxes constituted defaults under the Loan Documents.

In response to the Debtor’s defaults under the Loan Documents, on March 15, 2016, BPL sent the Debtor a Notice of Default, Demand for Cure, and Notice of Intention to Accelerate

Unpaid Principal Balance pursuant to the Loan Documents (the “Notice of Default Letter”). The Debtor failed to cure its default in response to the Notice of Default Letter.

On April 14, 2016, BPL served a Notice of Acceleration of the Note (the “Acceleration Letter”). Based on the pending and uncured defaults, the Acceleration Letter declared the entire unpaid principal balance of the Note due and owing as of the date of the Letter. Thus, as of April 14, 2016, the Note had been validly accelerated.

On June 13, 2016, BPL notified the Debtor of a foreclosure to be conducted on Tuesday, July 5, 2016.

On June 24, 2016 (the “Petition Date”), the Debtor filed its Chapter 11 petition in this Court.

**3.1.3 The Debtor’s Assets.** On the Petition Date, the Debtor’s most valuable assets consisted of the land, building, and improvements that comprised Cowboys. On July 11, 2016, the Debtor filed with the Bankruptcy Court the Schedules of Assets and Liabilities and Statements of Financial Affairs (as amended, the “Schedules”). The Schedules and all amendments are attached hereto as **Schedule 1**. The Debtor estimated in the Schedules that the value of its real property is \$10 million. The Debtor subsequently commissioned an appraisal that concluded the value was approximately \$8.84 million. The Debtor has further estimated that its lighting and sound systems are worth approximately \$1 million, among other assets.

The Schedules contain a detailed listing of the Debtor’s assets and the amounts owed to Creditors based on the Debtor’s books and records. In connection with this Disclosure Statement, Creditors and Interest Holders are referred to the Schedules.

**3.1.4 Liabilities and Claims against the Debtor.** The Schedules contain a detailed listing of Creditors, together with the estimated amount of Claims. Creditors and Interest Holders are referred to the Debtor’s Schedules.

**3.1.5 Secured Claims.** The Debtor’s first lien secured creditor, BPL, is owed approximately \$4,292,481.63 million as of the Petition Date. This amount includes principal and accrued interest, including default interest, under the Loan Documents, along with the reasonable amount of attorneys’ fees and costs incurred by BPL. BPL is entitled to payment of its prepetition claim, as set forth in the proof of claim, in addition to post-petition accrued but unpaid default interest, and attorneys’ fees and costs, pursuant to Bankruptcy Code section 506(b).

PSB Credit Services, Inc. (“PSB”) is owed approximately \$2.06 million and asserts a second lien on the Debtor’s real property and improvements.

**3.1.6 Priority Claims.** A number of priority claims were scheduled. These claims are either wages owed to former employees or taxes owed to governmental units.

**3.1.7 General Unsecured Claims.** Based on the schedules, the Debtor owes unsecured creditors, in the aggregate, approximately \$3.7 million. This number may not include all tort claims, unliquidated claims or claims for rejection damages.

**3.1.8 Potential Causes of Action.** Pre-petition, the Debtor engaged in a complex transaction with certain Insiders of the Debtor (the “Far West Transaction”). The Far West Transaction resulted in the Debtor incurring substantial debts while transferring away valuable assets. The purpose of the Far West Transaction was to remove Far West Realty, LP as the Debtor’s limited partner and to replace that entity with one or more entities affiliated with the Debtor’s general partner and Michael J. Murphy. In particular, the documents reviewed by BPL thus far indicate that the Debtor agreed to incur a series of obligations and make certain transfers to settle “allegations related to management and operation of [the Debtor] and CCHA [Cowboys Concert Hall Arlington]”. Under the Far West Transaction, the Debtor:

- a. agreed to release a \$3,000,000 note payable to the Debtor related to certain valuable real property in Houston, Texas;
- b. agreed to pay a \$3,000,000 note payable to Far West Realty, LP, one of the Debtor’s current limited partners;
- c. agreed to pay a \$500,000 note to Mr. Trevino (one of the principals of Far West Realty, LP, the Debtor’s limited partner);
- d. agreed to transfer certain Houston, Texas real property from the Debtor to Far West Realty, LP;
- e. even though the Debtor will not own the Houston real property, the Debtor agreed to make the payments on a \$300,000 note payable to Ciera Bank and secured by the Houston property; and
- f. agreed to pay the fees and costs of all parties to the transaction. The Debtor has begun making payments on the \$500,000 note referenced above and scheduled that note in its Schedules.

Mr. Murphy has testified that the value the Debtor received, or is to receive, for these transfers is a streamlined ownership structure. This alleged value appears to be woefully insufficient, and accordingly, the Debtor’s estate has substantial claims related to the foregoing transaction, including but limited to fraudulent transfer claims. In particular, it seems clear that the Debtor did not receive reasonably equivalent value for the substantial transfers, which were made when the Debtor was not paying its debts on time and may have been insolvent.

The Debtor claims the foregoing Far West Transaction has not closed, but the Debtor has already made payments on the new obligations incurred and the promissory notes and deeds contain no reservation or indication that they are not presently effective.

**THE RIGHT OF THE PLAN ADMINISTRATOR 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 BPL IMMEDIATELY AS ANY SUCH SUGGESTION MAY VIOLATE TITLE 18.**

### **3.2 Significant Events during the Chapter 11 Case.**

**3.2.1 Retention of Professionals.** The Debtor retained Willis & Wilkins, LLP as its bankruptcy counsel in this case on an hourly fees basis.

**3.2.2 Claims Bar Date.** In accordance with the requirements of section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, the Debtor filed its Schedules of its assets and liabilities, including schedules of all of its known creditors and the amounts and priorities of the Claims the Debtor believes are owed to such creditors. Pursuant to section 501 of the Bankruptcy Code any creditor or interest holder may file a Proof of Claim or Interest and, unless disputed, such filed Proof of Claim or Interest supersedes the amount and priority set forth in the Debtor's schedules. The Bankruptcy Court has entered an order fixing October 24, 2016 as the last date for filing Proofs of Claim in the Debtor's case ("Bar Date").

**3.2.3 Monthly Operating Reports.** On October 21, 2016, the Debtor filed its Monthly Operating Reports for July and August 2016. The reports reflect an approximate 50% reduction in revenue from July 2016 to August 2016, resulting in a net loss of approximately \$105,000 for August 2016. The MORs make clear that the Debtor's business is declining and it is uncertain whether the business can recover. At the Debtor's present level of revenues, the Debtor cannot service its first and second lien debt from the proceeds of operations. In fact, Debtor's counsel indicated at a hearing on October 24, 2016, that the Debtor's only way to make current payments is from limited reserves and from the proceeds of a returned tax payment—proceeds to which BPL is already entitled because BPL paid the Debtor's 2015 property taxes on the Debtor's behalf. Mr. Murphy has further testified that the Debtor has not reserved any funds to pay BPL.

**3.2.4 The Debtor's Exclusivity Period.** The Debtor's exclusive right pursuant to file a plan of reorganization expired on October 24, 2016. No plan was filed during the exclusivity period.

**3.2.5 The Debtor's Adversary Proceeding against BPL and Everbank.** On July 22, 2016, the Debtor filed an adversary complaint against BPL and Everbank, alleging among other things, that BPL improperly accelerated the Promissory Note and improperly posted the Debtor's property for foreclosure. *See* Adv. Proc. 16-05061-rbk (Bankr. W.D. Tex.).

On September 19, 2016, the Bankruptcy Court entered an order granting BPL's motion for summary judgment on all of the Debtor's claims, thereby dismissing the adversary proceeding. That order is currently on appeal.

**ARTICLE IV**  
**CLASSIFICATION OF CLAIMS AND INTERESTS UNDER THE PLAN**

Classification of claims is governed, in part, by sections 1122 and 1123(a) of the Bankruptcy Code. Section 1123(a) requires that a plan designate classes of claims, requires that the plan specify the treatment of any impaired class of claims, and requires that the plan provide the same treatment for each claim of a particular class, unless the holder of a claim receiving less favorable treatment consents to such treatment. 11 U.S.C. §1123(a)(1), (3) and (4). Section 1122(a) of the Bankruptcy Code provides, subject to an exception for administrative convenience, that “a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.”

**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 II of the Plan. These unclassified Claims are treated as follows.

**4.1.1 Administrative Claims.** Administrative Claims are the costs and expenses of administration of this Case, allowable under section 503(b) of the Bankruptcy Code, other than Bankruptcy Fees. Administrative Claims include Claims for the provision of goods and service to the Debtor after the Petition Date, the liabilities incurred in the ordinary course of the Debtor’s business (other than claims of governmental units for taxes or interest or penalties related to such taxes) after the Petition Date, Claims of professionals, such as attorneys, brokers, appraisers, and accountants, retained pursuant to an order of the Bankruptcy Court, for compensation and reimbursement of expenses under section 330 of the Bankruptcy Code, and tax claims for the period from the Petition Date to the Effective Date of the Plan.

Each Administrative Claim, to the extent not previously paid, shall be paid by the Plan Administrator in Cash in full on (i) the later of the Effective Date, the date payment of such Claim is due under the terms thereof or applicable law, or three business days after such Claim becomes an Administrative Claim or (ii) as may be otherwise mutually agreed in writing between the Plan Administrator and the holder of such Claim; *provided, however*, that any Administrative Claim incurred by the Debtor in the ordinary course of its business shall be paid in full in accordance with the terms and conditions of the particular transaction giving rise to such Administrative Claim and any agreements relating thereto.

Article II of the Plan sets a final date for the filing of Administrative Claims against the Debtor. The Administrative Bar Date is the first Business Day that is at least 30 days after the Effective Date.

**4.1.2 Bankruptcy Fees.** All fees and charges assessed against the Debtor of its Estate under section 1930 of title 28 of the United States Code and any applicable interest thereon shall be paid by the Plan Administrator in Cash in full as required by statute, and until the closing, conversion or dismissal of this case, whichever is earlier. The Plan Administrator shall continue to be responsible for the payment of any such fees and charges.

**4.1.3 Professional Fees.** Section 330 of the Bankruptcy Code sets the standard for the determination by the Bankruptcy Court of the appropriateness of fees to be awarded to Professionals retained by the Debtor in a case under the Bankruptcy Code. In general, bankruptcy legal services are entitled to command the same competency of counsel as other cases. “In that light, the policy of this section is to compensate attorneys and other professionals serving in a case under title 11 at the same rate as the attorney or other professional would be compensated for performing comparable service other than in a case under title 11.” 124 Cong. Rec. H11091 (Daily ed. Sept. 28, 1978).

All Professionals shall file final applications for approval of compensation and reimbursement and necessary expenses pursuant to section 330 of the Bankruptcy Code no later than the Administrative Bar Date.

**4.1.4 Priority Tax Claims.** Except as may be otherwise mutually agreed in writing, all Allowed Claims of Governmental Units entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code, shall be paid in full and receive on account of such claim, Cash in the amount of such Allowed Claim on the Effective Date.

## **4.2 Classified Claims Against and Interests in the Debtor.**

**4.2.1 Class 1 – Priority Claims.** Class 1 consists of all Allowed Claims, other than Administrative Claims or Bankruptcy Fees, to the extent entitled to priority under section 507 of the Bankruptcy Code. Certain Claims for taxes and the payment of expenses incurred by the Debtor subsequent to the Petition Date are entitled to priority under section 507 of the Bankruptcy Code, and are treated elsewhere as non-classified Claims.

**4.2.2 Class 2 – BPL’s First Lien Secured Claim.** Class 2 consists of the BPL’s Secured Claim.

**4.2.3 Class 3 – PSB’s Second Lien Secured Claim.** Class 3 consists of PSB’s secured claim.

**4.2.4 Class 4 – Other Secured Creditor Claims.** Class 4 consists of the Allowed Other Secured Claims.

**4.3.5 Class 5 – Unsecured Claims.** Class 5 consists of all Unsecured Claims.

**4.3.6 Class 6 – Allowed Interests.** Class 6 consists of all Allowed Interests in the Debtor.

## **ARTICLE V**

### **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 Class 1 – Priority Claims.**

**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 Plan.

**5.2.1 Class 2 – BPL’s First Lien Secured Claim.**

**5.2.2 Class 3 – PSB’s Second Lien Secured Claim.**

**5.2.3 Class 4 – Other Secured Creditor Claims.**

**5.2.4 Class 5 – General Unsecured Claims.**

**5.2.5 Class 6 – Interests in the Debtor.**

**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 VI**  
**TREATMENT OF CLAIMS AND EXECUTORY CONTRACTS**

**6.1 Treatment of Unimpaired Classes.**

**Class 1—Priority Claims.** Subject to the provisions of Article VIII of the Plan, with respect to Disputed Claims, in full satisfaction, release and discharge of the Priority Claims, the holders of Priority Claims shall receive the following treatment: on the Closing Date, or as soon as practicable after such Claims become Allowed Claims, each holder of a Priority Claim shall receive payment from the Plan Administrator, (i) in Cash, in the full amount of its Priority Claim, or (ii) as may be otherwise agreed in writing between the Debtor and the holder of such Claim. There appears to be no Priority Claims in this case.

**6.2 Treatment of Impaired Classes.**

**6.2.1 Class 2—BPL’s First Lien Secured Claim.** Class 2 consists of BPL’s Secured Claim. Upon the Closing Date, a holder of an allowed Class 2 claim will receive the proceeds of its collateral. The Class 2 is Impaired and, as such, the Holder of the Class 2 Claim is entitled to vote on the Plan. BPL’s Secured Claim is in the amount of \$4,292,481.63, in addition to accrued postpetition default rate interest and fees, which will be determined in connection with Plan confirmation.

**6.2.2 Class 3—PSB’s Second Lien Secured Claim.** Class 3 consists of PSB’s secured claim. Upon the Closing Date, a holder of an allowed Class 3 Claim will receive the proceeds of its collateral after all allowed senior claims have been paid in full in accordance with the

priorities set forth in the Bankruptcy Code. The Class 3 is Impaired and, as such, the Holder of the Class 3 Claim is entitled to vote on the Plan. PSB's secured claim is in the amount of \$2,059,537.19.

**6.2.3 Class 4—Other Secured Creditor Claims.** Class 4 consists of the Allowed Other Secured Creditor Claims. For purposes of voting and distribution, each Holder of an Other Secured Creditor Claim shall be deemed to be classified in a separate subclass of Class 4. Upon the Closing Date, a holder of an allowed Class 4 claim will receive the proceeds of its collateral after any Allowed senior claims have been paid in full in accordance with the priorities set forth in the Bankruptcy Code. The Class 4 is Impaired and, as such, the Holders of the Class 4 Claims are entitled to vote on the Plan. The Other Secured Creditor Claims are, in the aggregate, approximately \$163,000.

**6.2.4 Class 5—General Unsecured Claims.** Class 5 consists of the collective holders of Allowed Unsecured Claims against the Debtor. Each Allowed Unsecured Claim shall receive a pro-rata distribution of the Sale Proceeds after all allowed senior claims have been paid in full in accordance with the priorities set forth in the Bankruptcy Code. The Class 5 is Impaired and, as such, the Holders of the Class 5 Claims are entitled to vote on the Plan. The General Unsecured Claims are, in the aggregate, approximately \$3.7 million.

**6.2.5 Class 6—Interests in the Debtor.** Class 6 consists of the collective Interests in the Debtor. Each holder of an Interest shall receive a pro-rata distribution of the Sale Proceeds on account of their Interest after all classified and unclassified claims have been paid in full in accordance with the priorities set forth in the Bankruptcy Code, and thereafter, their Interest shall be extinguished. The Class 6 is Impaired and, as such, the Holders of the Class 6 Interests are entitled to vote on the Plan.

**6.3 Disputed Claims and Interests.** Article VIII of the Plan contains a mechanism for resolving disputes concerning the amount of certain Claims or Interests asserted against the Debtor by any Entity.

**6.3.1 Time to Object.** Unless otherwise ordered by the Bankruptcy Court, objections to the allowance of any Claim or Interest may be filed no later than the later to occur of (i) 30 days after the Effective Date or (ii) 30 days after the date proof of such Claim or Interest is filed. Until the earlier of (i) the filing of an objection to a Proof of Claim or Interest or (ii) the last date to file objections to Claims or Interests as established by the Plan or by Final Order, Claims or Interests shall be deemed to be Disputed in their entirety if, (i) the amount specified in a Proof of Claim or Interest exceeds the amount of any corresponding Claim or Interest listed in the Schedules; (ii) any corresponding Claim or Interest listed in the Schedules has been scheduled as disputed, contingent or unliquidated; or (iii) no corresponding Claim or Interest has been listed in the Schedules.

## **ARTICLE VII** **MEANS OF IMPLEMENTATION**

**7.1 Implementation.** The Plan Administrator shall be appointed on the Effective Date and the Plan Administrator, on behalf of the Debtor's Estate shall take all necessary steps, and

perform all necessary acts, to consummate the terms and conditions of the Plan. The Confirmation Order shall contain appropriate provisions, consistent with section 1142 of the Bankruptcy Code, directing the Plan Administrator and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property required by the Plan and to perform any act, including the satisfaction of any Lien, that is necessary for the consummation of the Plan. The Successful Purchaser shall have the protections afforded under the “good faith” purchase provisions of §363(m) of the Bankruptcy Code and all stay provisions under Bankruptcy Rule 6004(h) or elsewhere will be waived. The Plan Administrator is designated a party in fact to execute all documents in the name of the Debtor as may be required to consummate the Sale. Following the Effective Date, the Plan Administrator, on behalf of the Debtor, may operate, buy, use, acquire, and dispose of the property of the Estate and may settle and compromise any claims, interests and causes of action in accordance with the provisions of the Bankruptcy Code and the Bankruptcy Rules.

**7.2 Sale of Assets.** In order to fund the distributions under the Plan, the Plan Administrator shall sell the Debtor’s Property. The Plan Administrator shall consummate the closing and Sale of the Property to the Successful Purchaser and such sale shall not be taxed under any law imposing a stamp or similar tax as provided for in §1146(a) of the Bankruptcy Code. Pursuant to section 1123(a)(5)(D) of the Bankruptcy Code, the Debtor’s Property shall be sold to the Successful Purchaser, free and clear of any and all Liens, Claims, Encumbrances, Interests, bills, or charges whatsoever, other than the usual and customary utility easements, if any, appearing as of record or as preserved in this Plan, such sale being subject to higher or better offers. In order to locate potential buyers, the Plan Administrator shall have the authority to hire real estate agents or other professionals at his/her choosing to market the Property.

**7.3 Deadline for Completing Sale.** The Plan Administrator shall have sixty (60) days after the Effective Date for the Closing Date to occur. If it does not, the Plan Administrator shall sell the Property at an auction.

**7.4 Vesting of Assets.** Except as otherwise provided in the Plan, once the Successful Purchaser tenders the Purchase Price to the Plan Administrator, the Property shall vest in the successful Purchaser, free and clear of all Liens, Claims and encumbrances.

**7.5 Funding.** The Plan will be funded by monies made available by the sale of the Property. The Plan Administrator shall take all necessary steps and perform all acts to consummate the terms and conditions for the Plan, and the Debtor shall not interfere with the Plan Administrator in the performance of his duties. The Confirmation Order shall contain appropriate provisions consistent with section 1142 of the Bankruptcy Code, directing the Debtor and any other necessary party to execute or deliver or to join in the extension or delivery of any instrument required to affect the Plan or to perform any act necessary to consummate the Plan. Except as set forth elsewhere in the Plan, all payments required to be made under the Plan shall be made by the Plan Administrator for disbursement in accordance with the terms of the Plan.

**7.6 Preservation of Rights of Action.** The Debtor shall retain, and on the Effective Date shall be deemed to have assigned to the Plan Administrator, who may, in accordance with his/her determination of the best interest of the estate, seek to enforce any claims, rights and causes of

action arising under section 510 and 544 through 550 of the Bankruptcy Code or any similar provisions of state law, or any statute or legal theory, including but not limited to fraudulent transfer and preference actions against Insiders in connection with the Far West Transaction.

## **ARTICLE VIII** **DISTRIBUTIONS UNDER THE PLAN**

Article VIII of the Plan contains provisions governing the making of distributions on account of Claims and Interests. In general, any payments, distributions or other performance to be made pursuant to the Plan on account of any Allowed Claim or Allowed Interest shall be deemed to be timely made if made on or within five days following the later of (i) the Closing Date or (ii) the expiration of any applicable objection deadline with respect to such Claim or Interest or (iii) such other times provided in the Plan. All Cash payments to be made pursuant to the Plan shall be made by check drawn on a domestic bank.

**8.1 Distributions Made by Plan Administrator.** The Plan Administrator shall make distributions under the Plan for all claims. The Plan Administrator may employ or contract with other entities to assist in or perform the distribution of the property to be distributed. The Plan Administrator shall be entitled to compensation for services rendered under the Plan at its customary fee and reimbursement of all expenses incurred in the performance of its duties.

Distributions shall be made: (1) at the addresses set forth on the Proofs of Claim or Proofs of Interests filed by such holders; (2) at the addresses set forth in any written notices of address changes delivered to the Plan Administrator after the date of any related Proof of Claim or Proof of Interest; or (3) at the address reflected in the Schedules if no Proof of Claim or Proof of Interest is filed and the Plan Administrator has not received a written notice of a change of address. If the distribution to the holder of any Claim or Interest is returned to the Plan Administrator as undeliverable, no further distribution shall be made to such holder unless and until the Plan Administrator is notified in writing of such holder's then current address. Neither BPL nor the Plan Administrator shall be required to attempt to locate any holder of an Allowed Claim or an Allowed Interest.

**8.2 Unclaimed Distributions.** Any Cash or other property to be distributed under the Plan shall revert to the Plan Administrator and such creditor shall forfeit its right to receive any distribution(s) under this Plan if such distribution is not claimed by the Entity entitled thereto before the later of (i) 1 year after the Closing Date or (ii) 60 days after an Order allowing the Claim of that Entity becomes a Final Order or are otherwise Allowed.

**8.3 Distributions With Respect to Disputed Claims.** During the pendency of any objection to any Claim, no distribution under the Plan will be made to the holder of such Claim. However, there will be set aside and reserved on behalf of such disputed Claim such cash or property as the holder thereof would be entitled to receive in the event such Claim was an Allowed Claim on the date of such distribution. BPL may seek an order of the Bankruptcy Court estimating or limiting the amount of Cash or property that must be deposited in respect of any such disputed Claims. Cash held in reserve for disputed Claims will be held in trust for the benefit of the holders of such Claims.

Within 15 days after the entry of a Final Order resolving an objection to a Disputed Claim, the Plan Administrator shall distribute all Cash or other property, including any interest, dividends or proceeds thereof, to which a holder is then entitled with respect to any formerly Disputed Claim that has become an Allowed Claim. To the extent practicable, the Plan Administrator shall hold such cash in a segregated account in accordance with section 345 of the Bankruptcy Code, and may invest any cash or other property segregated on account of a Disputed Claim, Disputed Interest, undeliverable distribution, or any proceeds thereof; however, the Plan Administrator shall be under no obligation to so invest such Cash or proceeds and shall have no liability to any party for any investment made or any omission to invest such Cash, other property or proceeds. Any segregated amounts remaining after all Disputed Claims have been resolved will be paid to the Allowed Interests.

**8.4 Surrender of Instruments.** No Creditor that holds a note or other instrument of the Debtor evidencing such Creditor's Claim may receive any distribution with respect to such Claim or Interest unless and until the note or other instrument evidencing such Claim is surrendered pursuant to the provisions of the Plan. In the event an instrument evidencing a claim has been lost, stolen or mutilated, the Plan Administrator may request reasonable affidavits and indemnification by a financially responsible party before making any distribution(s) to such Creditor.

**8.5 Compliance with Tax Requirements.** In connection with the Plan, the Plan Administrator shall comply with all withholding and reporting requirements imposed by federal, state and local taxing authorities and distributions under the Plan shall be subject to such withholding and reporting requirements.

## **ARTICLE IX**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**9.1 Rejection of Executory Contracts and Unexpired Leases.** Effective on and as of the Closing Date, all Executory Contracts and Unexpired Leases to which the Debtor is a party shall be deemed rejected in accordance with section 365 of the Bankruptcy Code. BPL does not believe that there are any executory contracts and unexpired leases which would be subject to rejection.

**9.1.1 Rejection Claims.** Allowed Claims arising from the rejection of any Executory Contract or Unexpired Lease of the Debtor pursuant to the Plan shall be treated as Unsecured Claims. A Proof of Claim with respect to any Unsecured Claim for damages arising from the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan shall not be timely filed unless it is filed with the Bankruptcy Court and served so that it is received by the Plan Administrator within 30 days after the later of (i) the date of entry of a Final Order approving such rejection (unless such Final Order expressly provides a Bar Date with respect to such Claim, in which event no Proof of Claim with respect to such Claim shall be deemed timely unless it is filed with the Bankruptcy Court and served in the manner provided in such Final Order), or (ii) the Closing Date. Any such Claim not timely filed and served shall be forever barred from assertion and may not be enforced against the successful purchaser, the Debtor, their successors or their respective properties.

**ARTICLE X**  
**CONFIRMATION OF THE PLAN**

**10.1 Confirmation Hearing.** Section 1128(a) requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan (“Confirmation Hearing”). [The Confirmation Hearing has been scheduled before the Honorable Ronald B. King, United States Bankruptcy Judge, on \_\_\_\_\_, 2016 at \_\_\_\_:\_\_\_\_.m. (San Antonio time), in the United States Courthouse, 615 E. Houston St., San Antonio, Texas 78205.] The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except an announcement made at the Confirmation Hearing or any adjournment thereof.

Section 1128(b) provides that any party in interest may object to confirmation of the Plan. However, an impaired Creditor, who votes to accept the Plan, may not have standing to object to the Plan. Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014 and any applicable Local Rules of the Bankruptcy Court. [**The deadline for filing objections to confirmation of the Plan is \_\_\_\_\_, 2016.**] Objections to confirmation must be filed with the Clerk of Court.

**UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY FILED AND SERVED, IT WILL NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

**10.2 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 proponent of the Plan complies 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 proponent of the Plan has 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 has 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 Plan Proponent 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 plan proponent or any successor to the plan proponent under the Plan, unless such liquidation or reorganization is proposed in the Plan.

BPL believes that the Plan satisfies all the statutory requirements of Chapter 11 of the Bankruptcy Code, that the Debtor has 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.

**10.3 Liquidation Analysis.** BPL has concluded that the Plan provides to each Creditor and Interest Holder a recovery with a *present value* at least equal to the present value of the distribution that such person would receive if the Debtor were to be liquidated under Chapter 7 of the Bankruptcy Code. The Plan generally provides for the Debtor's liquidation of the Property and the payment of the Debtor's outstanding secured indebtedness in accordance with the priorities set forth in the Bankruptcy Code. The Plan further provides for the pro-rata distribution of Unsecured Claims and Interests after all senior claims are paid in full.

The proposed Plan provides for the sale of the Property. Any Chapter 7 liquidation would effectuate the same sale, but would be burdened by the attendant costs and commissions of a Chapter 7 trustee and its counsel. Accordingly, BPL believes that the Plan provides Creditors with at least as much as they would be entitled to receive in a Chapter 7 liquidation.

**10.4 Feasibility.** For the Plan to be confirmed, it must be demonstrated that consummation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor. This Plan calls for the sale of the Debtor's Property to the successful purchaser. Thus the Plan meets the feasibility requirements of the Bankruptcy Code.

**10.5 Cramdown.** In the event that any impaired class of Claims does not accept the Plan, the Bankruptcy Court may still confirm the Plan if, as to each impaired class which has not accepted the Plan, the Plan does not discriminate unfairly and is "fair and equitable." A plan of reorganization does not discriminate unfairly within the meaning of the Bankruptcy Code if no class receives more than it is legally entitled to receive for its claims or equity interests.

"Fair and equitable" has different meanings with respect to the treatment of secured and unsecured claims. As set forth in § 1129(b)(2) of the Bankruptcy Code, those meanings are as follows:

1. With respect to a class of secured claims, the Plan provides:
  - (a) (i) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the Plan Proponent or transferred to another entity, to the extent of the allowed amount of such claims; and  
  
(ii) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the Plan, of at least the value of such holder's interest in the estate's interest in such property;
  - (b) for the sale, subject to § 363(k) of the Bankruptcy Code, of any property that is subject to the Liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (a) and (b) of this subparagraph; or
  - (c) for the realization by such holders of the indubitable equivalent of such claims.
2. With respect to a class of unsecured claims, the Plan provides:
  - (a) that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the Plan, equal to the allowed amount of such claim; or
  - (b) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the Plan on account of such junior claim or interest any property.
3. With respect to a class of interests, the Plan provides:
  - (a) that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the Plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or
  - (b) the holder of any interest that is junior to the interests of such class will not receive or retain under the Plan on account of such junior interest any property.

The Bankruptcy Court will determine at the Confirmation Hearing whether the Plan is fair and equitable with respect to, and does not discriminate unfairly against, any rejecting impaired class of Claims. BPL believes that the Bankruptcy Court will find these requirements satisfactory and will confirm the Plan.

**10.6 Effective Date.** The Effective Date is defined in the Plan as the day selected by BPL that is no earlier than the first Business Day after the date the Confirmation Order becomes a Final Order.

**10.7 Retention of Jurisdiction by Bankruptcy Court.** The Court shall retain and have exclusive jurisdiction over these Chapter 11 Case to the maximum extent provided by law for the follow purposes following the Confirmation Date: (i) to determine any and all objections to the allowance and classification of Claims or Interests; (ii) to determine the validity and priority of any Lien; (iii) to determine the Allowed Amount of any Claim, whether secured or unsecured; (iv) to allow any and all applications for allowances of compensation and reimbursement of expenses payable from the Estate; (v) to determine any and all applications or motions pending before the Court on the Effective Date of the Plan, including without limitation any motions for the rejection, assumption or assumption and assignment of any executory contract or unexpired lease; (vi) to consider and approve any modification of the Plan, remedy any defect or omission or reconcile any inconsistency in the Plan, or any order of the Court, including the Confirmation Order; (vii) to hear and determine all controversies, suits and disputes that may arise in connection with the interpretation, enforcement or consummation of the Plan, the Confirmation Order, any transactions or payments contemplated hereby or any agreement, instrument or other document governing or related to any of the foregoing; (viii) to consider and act on the compromise and settlement of any claim or cause of action by or against the Debtor; (ix) to issue orders in aid of execution and implementation of the Plan and the Confirmation Order, to the extent authorized by 11 U.S.C. § 1142 or provided by the terms of the Plan; and (x) to hear and determine matters concerning federal, state or local taxes in accordance with §§ 346, 505 or 1146 of the Bankruptcy Code.

In no event shall the provisions of the Plan be deemed to confer in the Bankruptcy Court jurisdiction greater than that established by the provisions of 28 U.S.C. §§ 157 and 1334.

## **ARTICLE XI**

### **MISCELLANEOUS PROVISIONS**

**11.1 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 30 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 and the Debtor and the Plan Administrator shall have no liability for payment of any such Administrative Claim.

**11.2 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 21st day following the date on which the application was filed. Any objections will be determined by the Bankruptcy Court.

**11.3 Payment of Professional Claims.** Each holder of a 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 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 approved as of the Effective Date shall be filed within forty-five (45) 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.

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

**11.5 Orders in Aid of Consummation.** Pursuant to sections 105, 1141, 1142 and 1143 of the Bankruptcy Code, the Bankruptcy Court may enter one or more Orders in aid of Confirmation directing the implementation of matters or actions required by the Plan.

**11.6 Due Authorization by Creditors.** Each and every Creditor who elects to participate in the distributions provided for under the Plan warrants that it is the lawful owner of such Claim and is authorized to accept the distributions provided for in the Plan and that there are no outstanding Liens, encumbrances, commitments, agreements, or understandings, express or implied, that may or can in any way defeat or modify the rights released, conveyed or modified by the Plan, or obligations undertaken by such Creditor under the Plan.

**11.7 Substantial Consummation.** Upon the Closing Date, the Plan shall be deemed to be substantially consummated under Bankruptcy Code §§ 1101 and 1127(b).

**11.8 Amendments.** The Plan may be altered, amended or modified by BPL, in writing, signed by BPL at any time before the substantial consummation of the Plan, as provided in sections 1101(a) and 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

**11.9 Revocation.** BPL may revoke or withdraw the Plan at any time prior to entry of the Confirmation Order. If the Plan is revoked or withdrawn or if no Confirmation Order is entered, the Plan shall be null and void, and nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against the Debtor; or (ii) prejudice in any manner the rights of the Debtor in any further proceedings involving the Debtor or its Estate.

**11.10 Request for Relief Under Section 1129(b).** If the Plan is accepted by one or more, but not all impaired Classes of Creditors, BPL may request confirmation under section 1129(b) of the Bankruptcy Code, subject to any modification of the Plan made pursuant to section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019.

**11.11 Filing of Additional Documents.** Except as otherwise provided in the Plan, on or before the Closing Date, BPL and the Plan Administrator may file with the Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

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

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

**11.14 Alternatives to the Plan.** If the Plan is not confirmed by the Bankruptcy Court the alternatives may include (a) liquidation of the Debtor under Chapter 7 of the Bankruptcy Code or (b) the dismissal of the Debtor's case.

BPL believes that the Plan provides a recovery to all Creditors and Interest Holders equal to or greater than would be obtainable in Chapter 7 liquidation or foreclosure sale and believes that the Plan enables Creditors to realize the most value under the circumstances.

**11.15 Taxation.** The following summary of certain U.S. Federal income tax consequences is for informational purposes only and is not a substitute for careful tax planning and advice based upon the particular circumstances pertaining to each holder of an Allowed Claim. Each holder of an Allowed Claim is urged to consult his own tax advisors. This summary does not cover all potential U.S. federal income tax consequences that could possibly arise under the Plan and does not address the Plan's U.S. federal income tax consequences for any holder of an Allowed Claim that is a partnership (or other pass-through entity) or otherwise subject to special tax rules.

BPL has not requested any ruling from the Internal Revenue Service or any other taxing authority with respect to such matters nor will BPL, or the Debtor, with respect to the federal income tax consequences of the Plan, obtain any opinion of counsel. Consequently, there can be no assurance that the treatment set forth in the following discussion will be accepted by the IRS. BPL offers no statements or opinions that are to be relied upon by the creditors as to the treatment of creditors' claims under the Plan. Matters not discussed in this Disclosure Statement may affect the tax consequences of the Plan on any particular holder of a Claim or Equity Interest

This summary is based upon the laws in effect on the date of this Disclosure Statement and existing judicial and administrative interpretations thereof, all of which are subject to change, possibly with retroactive effect. Holders of Allowed Claims should consult their own tax advisors as to the Plan's specific federal, state, local and foreign income and other tax consequences.

The tax consequences to Creditors and Interest Holders will differ and will depend on factors specific to each Creditor or Interest Holder, including but not limited to: (i) whether the Claim or Interest (or portion thereof) constitutes a claim for principal or interest; (ii) the origin of the

Claim or Interest; (iii) the type of consideration received by the Creditor or Interest Holder in exchange for the Claim or Interest; (iv) whether the Creditor or Interest Holder is a United States person or foreign person for tax purposes; (v) whether the Creditor or Interest Holder reports income on the accrual or cash basis method; (vi) whether the Creditor or Interest Holder has taken a bad debt deduction or otherwise recognized loss with respect to a Claim or Interest.

**THERE ARE MANY FACTORS WHICH WILL DETERMINE THE TAX CONSEQUENCES TO EACH CREDITOR OR INTEREST HOLDER. FURTHERMORE, THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX, AND IN SOME CASES, UNCERTAIN. THEREFORE IT IS IMPORTANT THAT EACH CREDITOR OR INTEREST HOLDER OBTAIN HIS, HER OR ITS OWN TAX ADVICE REGARDING THE TAX CONSEQUENCES TO SUCH CREDITOR OR INTEREST HOLDER AS A RESULT OF THE PLAN.**

**THE DISCUSSION HEREIN IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY CREDITOR OR INTEREST HOLDER FOR THE PURPOSE OF AVOIDING TAX PENALTIES THAT MAY BE IMPOSED ON A TAX PAYER. THE DISCUSSION HEREIN WAS WRITTEN TO SUPPORT THE TRANSACTIONS DESCRIBED IN THIS DISCLOSURE STATEMENT. EACH CREDITOR OR INTEREST HOLDER SHOULD SEEK ADVICE BASED UPON THE CREDITOR'S OR INTEREST HOLDER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

**ARTICLE XII**  
**VOTING PROCEDURES AND REQUIREMENTS**

**12.1 Ballots and Voting Deadline.** A ballot to be used to vote to accept or reject the Plan is enclosed with this Disclosure Statement. A Creditor who is voting must (1) carefully review the ballot and instructions thereon, (2) complete and execute the ballot indicating the Creditor's vote to either accept or reject the Plan, and (3) return the executed ballot to the address indicated thereon by the deadline specified by the Bankruptcy Court.

**[The Bankruptcy Court has directed that, to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be received by BPL no later than \_\_\_\_\_, 2016.]**

If you hold an impaired Claim against the Debtor, return your ballot to:

Eric English  
Porter Hedges LLP  
1000 Main St., 36th Floor  
Houston, TX 77002.

**[TO BE COUNTED, YOUR BALLOT MUST BE RECEIVED  
NO LATER THAN \_\_\_\_\_, 2016]**

**12.2 Creditors Entitled to Vote.** Any Creditor whose Claim is impaired under the Plan is entitled to vote, if either (i) the Debtor has 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.

**12.3 Voting Procedures.** Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt), acceptance, revocation, or withdrawal of Ballots will be determined by BPL, in their sole discretion, and BPL’s determination will be final and binding. BPL also reserves the right to reject any Ballot not in proper form, the acceptance of which would, in the opinion of BPL or their counsel, be unlawful. BPL further reserves the right to waive any defects or irregularities or conditions or delivery as to any particular Ballot. The interpretation by BPL of the provisions of this Disclosure Statement and the Ballots will be final and binding on all parties in interest unless otherwise directed by the Bankruptcy Court. Unless waived, any defects or irregularities concerning deliveries of Ballots must be cured within such time as BPL (or the Bankruptcy Court) determine. Neither BPL nor any other Person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots nor will any of them incur any liability for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of Ballots will not be deemed to have been made and will be invalidated unless or until all defects and irregularities have been timely cured or waived.

**12.4 Vote Required for Class Acceptance.** 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.

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

**BPL STRONGLY URGES ALL IMPAIRED CREDITORS TO VOTE TO ACCEPT THE PLAN.**

**Dated:** October 25, 2016.

**PORTER HEDGES LLP**

*/s/ Eric M. English*

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