

THIS PROPOSED DISCLOSURE STATEMENT HAS NOT BEEN APPROVED UNDER SECTION 1125(B) OF THE BANKRUPTCY CODE BY THE BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION FOR USE IN CONNECTION WITH THE SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE DEBTOR’S CHAPTER 11 PLAN OF REORGANIZATION DESCRIBED HEREIN. ACCORDINGLY, THE FILING AND DISSEMINATION OF THIS PROPOSED DISCLOSURE STATEMENT IS NOT INTENDED AND SHOULD NOT IN ANYWAY BE CONSTRUED AS A SOLICITATION OF VOTES FOR THE DEBTOR’S CHAPTER 11 PLAN OF REORGANIZATION, NOR SHOULD THE INFORMATION CONTAINED HEREIN BE RELIED UPON FOR ANY PURPOSE BEFORE A DETERMINATION BY THE BANKRUPTCY COURT THAT THE PROPOSED DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION.

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

IN RE: §
§
SEER ENVIRONMENTAL MATERIALS, LLC, §
DEBTOR. §
§
CASE NO. 16-51875-RBK
CHAPTER 11

**DISCLOSURE STATEMENT IN SUPPORT OF
DEBTOR’S CHAPTER 11 PLAN OF REORGANIZATION, DATED OCTOBER 7, 2016**

Date: October 7, 2016

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IMPORTANT NOTICE

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

THIS DISCLOSURE STATEMENT INCLUDES FORWARD-LOOKING STATEMENTS BASED LARGELY ON THE CURRENT EXPECTATIONS OF THE DEBTOR AND PROJECTIONS ABOUT FUTURE EVENTS AND FINANCIAL TRENDS AFFECTING THE FINANCIAL CONDITION OF THE DEBTOR OR THE REORGANIZED DEBTOR'S BUSINESS. THE WORDS "BELIEVE," "MAY," "WILL," "ESTIMATE," "CONTINUE," "ANTICIPATE," "INTEND," "EXPECT," AND SIMILAR EXPRESSIONS IDENTIFY THESE FORWARD-LOOKING STATEMENTS. THESE FORWARD-LOOKING STATEMENTS ARE SUBJECT TO A NUMBER OF RISKS, UNCERTAINTIES, AND ASSUMPTIONS, INCLUDING THOSE DESCRIBED BELOW UNDER THE CAPTION "RISK FACTORS." IN LIGHT OF THESE RISKS AND UNCERTAINTIES, THE FORWARD LOOKING EVENTS AND CIRCUMSTANCES DISCUSSED IN THIS DISCLOSURE STATEMENT MAY NOT OCCUR, AND ACTUAL RESULTS COULD DIFFER MATERIALLY FROM THOSE ANTICIPATED IN THE FORWARD-LOOKING STATEMENTS. NEITHER THE DEBTOR NOR THE REORGANIZED DEBTOR HAS UNDERTAKEN ANY OBLIGATIONS TO UPDATE OR REVISE ANY FORWARD-LOOKING STATEMENTS, WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS, OR OTHERWISE.

NO REPRESENTATIONS OR OTHER STATEMENTS CONCERNING THE DEBTOR (PARTICULARLY AS TO ITS FUTURE BUSINESS OPERATIONS OR THE VALUE OF ITS ASSETS) ARE AUTHORIZED BY THE DEBTOR, OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE, WHICH ARE OTHER THAN AS SET FORTH IN THIS STATEMENT, SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISIONS. ANY SUCH ADDITIONAL REPRESENTATIONS AND INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR WHO SHALL DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT, WHICH MAY TAKE SUCH ACTION AS IT DEEMS APPROPRIATE.

THE INFORMATION CONTAINED HEREIN HAS NOT BEEN INDEPENDENTLY AUDITED, EXCEPT AS SPECIFICALLY REFERENCED HEREIN. THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN SUBMITTED BY THE DEBTOR AND ITS INTERNAL ACCOUNTING STAFF, UNLESS SPECIFICALLY STATED TO BE FROM OTHER SOURCES. THE DEBTOR'S PLAN IS AN INTEGRAL PART OF THIS DISCLOSURE STATEMENT,

AND EACH CREDITOR IS URGED TO REVIEW THE PLAN IN ITS ENTIRETY PRIOR TO VOTING ON IT.

THE DEBTOR MAKES NO REPRESENTATIONS WITH RESPECT TO THE EFFECTS OF TAXATION (STATE OR FEDERAL) ON THE CREDITORS WITH RESPECT TO THE TREATMENT OF THEIR CLAIMS OR INTERESTS UNDER THE PLAN, AND NO SUCH REPRESENTATIONS ARE AUTHORIZED BY THE DEBTOR. CREDITORS ARE ENCOURAGED TO SEEK THE ADVICE OF THEIR OWN PROFESSIONAL ADVISORS IF THEY HAVE ANY SUCH QUESTIONS.

I.
INTRODUCTION

This Disclosure Statement is submitted by SEER Environmental Materials, LLC (“SEM” the “Company,” the “Debtor,” and/or the “Debtor-in-Possession”) in connection with the Debtor’s efforts to solicit votes necessary to confirm the Debtor’s Chapter 11 Plan of Reorganization (the “Plan”). A copy of the Plan is attached hereto as Exhibit “1.” Capitalized terms that are not defined in this Disclosure Statement are defined in the Plan or the list of definitions attached to the Plan as Schedule 1. If a capitalized term is not defined in this Disclosure Statement, the Plan or Schedule 1 to the Plan, then the term is to be given its ordinary, plain language meaning.

1.1 The Chapter 11 Case

This case was commenced on August 23, 2016, when a group of petitioning creditors commenced an involuntary proceeding under Chapter 7 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division (“Bankruptcy Court”). On August 30, 2016, the Debtor moved to convert the case to one under Chapter 11, and signed an Agreed Order for Relief. The Agreed Order for Relief was entered on September 1, 2016, and the case was converted to a Chapter 11 proceeding on the same date. The Debtor continues to manage its affairs as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. This Disclosure Statement and the accompanying Plan are filed on behalf of the Debtor.

1.2 Purpose of Disclosure Statement

The purpose of this Disclosure Statement is to provide you, as the holder of a Claim against or interest in the Debtor, with information to enable you to make a reasonably informed decision on the Plan before exercising your right to vote to accept or reject the Plan.

On _____, after notice and a hearing, the Bankruptcy Court approved this Disclosure Statement as containing information, of a kind and in sufficient detail, adequate to enable the holders of Claims against the Debtor to make an informed judgment to accept or reject the Plan. **THE BANKRUPTCY COURT’S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THIS INFORMATION OR THE BANKRUPTCY COURT’S ENDORSEMENT OF THE PLAN.**

YOU SHOULD READ ALL OF THIS DISCLOSURE STATEMENT BEFORE VOTING ON THE PLAN. HOWEVER, THE DISCLOSURE STATEMENT IS NOT INTENDED TO REPLACE A CAREFUL, DETAILED REVIEW AND ANALYSIS OF THE PLAN ITSELF BY EACH HOLDER OF A CLAIM OR INTEREST. THIS DISCLOSURE STATEMENT IS INTENDED TO AID AND SUPPLEMENT THAT REVIEW AND ANALYSIS. THE DESCRIPTION OF THE PLAN IS A SUMMARY ONLY. HOLDERS OF CLAIMS AND INTERESTS AND OTHER PARTIES IN INTEREST ARE CAUTIONED TO REVIEW THE PLAN AND ANY RELATED ATTACHMENTS IN THEIR ENTIRETY FOR A FULL UNDERSTANDING OF THE PLAN'S PROVISIONS. THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN.

You are urged to consult with your own financial and other advisors in deciding whether to vote to approve or reject the Plan. No solicitation of votes may be made except pursuant to this Disclosure Statement, and no person has been authorized to use any information concerning the Debtor or their businesses other than the information contained in this Disclosure Statement.

About this Disclosure Statement:

- The statements contained in this Disclosure Statement are made as of the date that the Bankruptcy Court enters an order approving this Disclosure Statement, unless another time is specified in this Disclosure Statement. Neither the delivery of this Disclosure Statement nor any action taken in connection with the Plan implies that the information contained in this Disclosure Statement is correct as of any time after that date.

- Unless the context requires otherwise: (i) the gender (or lack of gender) of all words used in this Disclosure Statement includes the masculine, feminine, and neuter; (ii) references to articles and sections (other than in connection with the Bankruptcy Code, the Bankruptcy Rules, another specified law or regulation or another specified document) refer to the articles and sections of this Disclosure Statement; and (iii) "including" means "including, without limitation."

- Many capitalized words used in this Disclosure Statement have been defined in the context of the provisions in which they first appear within this Disclosure Statement. Any other capitalized terms used in this Disclosure Statement are intended to have the meanings ascribed to them in the Plan or the list of definitions accompanying the Plan. Any capitalized term not defined in the context of a provision in this Disclosure Statement, the Plan, or the list of definitions accompanying the Plan shall have the meaning ascribed to that term in the Bankruptcy Code or Bankruptcy Rules, whichever is applicable.

- You may not rely on this Disclosure Statement for any purpose other than to determine how to vote on the Plan. Nothing contained in this Disclosure Statement constitutes or will be deemed to be advice on the tax or other legal effects of the Plan on holders of Claims or interests.

- Certain information contained in this Disclosure Statement is forward-

looking. This Disclosure Statement contains estimates and assumptions that may prove not to have been accurate, and it contains financial projections that may be materially different from actual future occurrences.

▪ Acceptance or rejection of the Plan is subject to a number of risks. See “Risk Factors” in Article 8 herein.

1.3 Plan Balloting and Confirmation Procedures

1.3.1 Only Holders of Allowed Claims Entitled to Vote

Only holders of Allowed Claims that are (i) “impaired” by a plan of reorganization or liquidation; (ii) entitled to receive a distribution under such a plan; and (iii) are permitted by order of the Bankruptcy Court after notice and hearing are entitled to vote to accept or reject a plan under the Bankruptcy Code. Class 1 is not entitled to vote. Claims in Classes 2 through 7 are impaired under the Plan, and therefore, shall be entitled to vote to accept or reject the Plan. Class 8 is presumed to have rejected the Plan. If a controversy arises as to whether any Claim or interest or any Class of Claims or Interests is impaired under the Plan, the Court shall, upon notice and a hearing, determine such controversy.

1.3.2 Voting Procedures

If you are entitled to vote to accept or reject the Plan, a Ballot (the “Ballot”) for acceptance or rejection of the Plan and a pre-addressed envelope for return of the Ballot are enclosed. **BALLOTS FOR ACCEPTANCE OR REJECTION OF THE PLAN ARE BEING PROVIDED ONLY TO HOLDERS OF ALLOWED CLAIMS IN CLASSES TWO THROUGH SEVEN.** If you are the holder of an Allowed Claim in one of these Classes entitled to vote and did not receive a Ballot, received a damaged or illegible Ballot, or lost your Ballot, or if you are a party-in-interest and have any questions concerning the Disclosure Statement, the Plan, or the voting procedures, please contact:

Kell C. Mercer
State Bar No. 24007668
Kell C. Mercer, PC
1602 E. Cesar Chavez Street
Austin, TX 78702
(512) 627-3512
kell.mercer@mercerc-law-pc.com

After carefully reviewing this Disclosure Statement, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan. Return the Ballot to the Debtor’s counsel at the address set forth on the Ballot by **5:00 p.m.** (prevailing Central Standard Time) on _____. You may also return your Ballot by courier or facsimile by following the instructions on the Ballot. Any Ballot not indicating an acceptance or rejection will be deemed an acceptance of the Plan. **ANY BALLOTS RECEIVED BY THE DEBTOR’S COUNSEL AFTER 5:00 P.M. (PREVAILING CENTRAL STANDARD TIME), ON _____,**

WILL NOT BE COUNTED UNLESS THIS DATE IS EXTENDED BY THE BANKRUPTCY COURT.

1.3.3 Voting Requirements for Class Acceptance of the Plan

In order for the Plan to be “accepted” by Creditors, at least sixty-six and two-thirds percent (66.66%) in amount of Allowed Claims and more than fifty percent (50%) in number of Allowed Claims voting in each Class must accept the Plan.

1.3.4 Confirmation Hearing

The Bankruptcy Court has entered an order fixing at ____ (Prevailing Central Standard Time), Bankruptcy Courtroom for the Honorable Ronald B. King, Chief United States Bankruptcy Judge for the United States Bankruptcy Court for the Western District of Texas, Hipolito F. Garcia Federal Building and United States Courthouse, 615 East Houston Street, San Antonio, Texas 78205, as the date, time and place for the initial commencement of a hearing on the confirmation of the Plan, and _____, which all objections to Confirmation of the Plan must be filed with the Bankruptcy Court and served on counsel for the Debtor. The confirmation hearing may be adjourned from time to time without further notice except for the announcement of the adjourned time and date at the confirmation hearing or any adjournment thereof.

Section 1128(b) of the Bankruptcy Code provides that any creditor or party-in-interest may object to confirmation of a plan. Any objection to confirmation of the Plan must: (i) be in writing; (ii) conform to the Federal Rules of Bankruptcy Procedure and Local Rules of the Bankruptcy Court; (iii) set forth the name of the objecting party; (iv) the nature and amount of the Claim or Interest held or asserted by the objecting party against the Debtor’s Bankruptcy Estate; and (v) the basis for the objection. The objection, together with proof of service, must then be filed with the Bankruptcy Court, with copies served upon parties required to receive service under Local Rule 9013-1(d), and to the Debtor’s counsel at:

Kell C. Mercer
State Bar No. 24007668
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1602 E. Cesar Chavez Street
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(512) 627-3512
kell.mercer@mercerc-law-pc.com

UNLESS AN OBJECTION IS TIMELY AND PROPERLY SERVED AND FILED BY __, AT 5:00 P.M. (PREVAILING CENTRAL STANDARD TIME), THE OBJECTION MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

II. **DEBTOR'S BACKGROUND**

2.01 General and Causes of Bankruptcy Filing

The Debtor was formed in September of 2015, and is a wholly owned subsidiary of Strategic Environmental & Energy Resources, Inc. (“SEER”). SEER is a publicly traded corporation. The Debtor’s principal assets include a manufacturing facility located in Waelder, Gonzales County, Texas, as well as inventory, equipment, intellectual property, trade names, insurance policies and proceeds, claims and causes of action.

Michael Cardillo is the President of the Debtor. Monty R. Lamirato is the Chief Financial Officer of the Debtor. SEER is the manager of the Debtor. The Debtor maintains its corporate offices at 751 Pine Ridge Road, Golden, Colorado 80403.

Shortly after its formation, on October 13, 2015, SEM entered into an Asset Purchase Agreement (the “APA”) with Coastal Flow Measurement, Inc. (“Coastal”) and Physichem Technologies, Inc. (“Physichem”) pursuant to which SEM acquired equipment, inventories, manufacturing formula, manufacturing process, trademark number 3977353, the FerroSweet® iron sponge brand, client list, and other related assets described in more detail in the APA. The purchase price under the APA was \$250,000, \$150,000 of which was paid in cash, and \$100,000 of which took the form of secured seller financing by Coastal. The Debtor entered into a promissory note and security agreement with Coastal for the payment of the \$100,000.00 seller financing. As of the Petition Date, the balance owed to Coastal under the note was \$65,010.62. Coastal asserts a fully perfected security interest in the assets sold under the APA.

SEM also entered into a Commercial Contract – Improved Property with Stephen K. Whitman (“Whitman”), on October 13, 2015, pursuant to which SEM purchased the real property and improvements located at 488 CR 443, Waelder, Texas 78959. The purchase price for the real property and improvements was \$450,000.00, \$225,000 of which was paid in cash, and \$225,000.00 of which took the form of secured seller financing by Whitman. The Debtor entered into a promissory note and deed of trust and security agreement with Whitman for the payment of the \$225,000.00 seller financing. As of the Petition Date, the balance owed to Whitman under the note was \$198,233.22. Whitman asserts a fully perfected security interest in the real property and improvements in Gonzales County, Texas.

SEER provided SEM with the cash component to complete the APA and Commercial Contract – Improved Property. SEER has subsequently provided SEM with operating capital prior to the Petition Date. As of the Petition Date, SEM’s books reflect a balance owed to SEER in the amount of \$1,012,893.50.

The Debtor manufactures a proprietary BioActive Media product that is derived from a commercially available product known as “iron sponge.” The BioActive Media product is then sold by SEM to its sole current customer Mtarri/Varani Emissions Treatment, LLC d/b/a MV Technologies (“MV Technologies”). MV Technologies uses the BioActive Media product in its

Hydrogen Sulfide (H₂S) removal systems that remove H₂S from landfill gas. MV Technologies is a affiliated, sister company of the Debtor owned by SEER. At this time, MV Technologies is the only customer of SEM. However, SEM's plans include developing additional customers.

In addition to the officers based in Golden, Colorado, the Debtor has two employees engaged in the manufacturing process in Waelder, Texas.

On or about January 4, 2015, while driving a SEM pick-up truck and trailer, then-SEM employee Philip Lee John, Jr. ("John") was involved in a vehicular collision that caused one fatality and serious injuries to a minor child (the "Collision"). John was a laborer at the Waelder, Texas manufacturing facility, and was on route picking up supplies to be used in SEM's manufacturing process. Jessie L. Davis was killed in the accident, leaving behind her husband, Robert Davis, her mother, Joyce L. Davis, and her sons, Waylon Davis and Jerry Davis (the "Davis Family"). Aubree Offerrall, a minor, unrelated to Jessie L. Davis, was a passenger in the collision and sustained serious injuries ("Offerrall").

Two lawsuits have been filed relating to the Collision as of the Petition Date: (1) *CASA for the Highland Lakes Area, Inc. a/n/f Aubree Offerrall, a minor v. Philip Lee John, Jr., et al.*, Cause No. 196-335, In the District Court of Bastrop County, Texas, 335th Judicial District (the "Offerrall Lawsuit"); and (2) *Davis, et al. v. Strategic Environmental & Energy Resources, Inc. et al.*, Case No. 16-135-LY, In the United States District Court for the Western District of Texas, Austin Division (the "Davis Lawsuit") (collectively, the Offerrall Lawsuit and the Davis Lawsuit are referred to as the "Collision Lawsuits"). SEM is a named defendant in each of the Collision Lawsuits.

SEM is insured by Great Divide Insurance Company & Nautilus Insurance Company under Policy BAP2013-543-11 (Commercial Auto) and Policy FFX2013542-11 (Excess Liability) (the "Insurers" under the "Insurance Policies"). The Insurers have provided a defense and defense counsel to SEM and SEER in connection with the Collision Lawsuits. Prior to the Petition Date, Peter Strelitz and the lawfirm of Segal McCambridge were engaged by the Insurers to represent SEM and SEER in connection with the Collision Lawsuits ("Segal McCambridge").

On August 1, 2016, counsel for the Davis Family made a settlement demand of \$5,250,000.00 on Segal McCambridge (the "Davis Family Demand"). The Davis Family Demand was set to expire on August 17, 2016.

On August 10, 2016, counsel for Offerrall transmitted a settlement offer by email to Segal McCambridge, offering to resolve all claims of Offerrall for \$6,000,000.00 (the "Offerrall Demand"). Thereafter, on or about August 17, 2016, counsel for Offerrall spoke with Segal McCambridge in which it was discussed that the remaining policy limits as of that date were \$5,987,513.69. Following that discussion, counsel for Offerrall issued a new email, in which he advised that the remaining policy limits would satisfy his client's "policy limits settlement demand." Later that date, Segal McCambridge confirmed by email the acceptance of the policy limits demand from Offerrall (the "purported informal settlement").

SEM disputes the validity and/or current enforceability of the purported informal settlement. The

purported informal settlement with Offerrall would extinguish the available insurance proceeds, leaving no proceeds available for the Davis Family if they have an Allowed Claim. As noted above, the Davis Family had a settlement offer on the table at the same time as the Offerrall Demand. At the time the purported informal settlement agreement was “reached” SEM was and, as Debtor-in-Possession remains, opposed to its provisions. Additionally, SEM has reason to believe and does believe that the Offerrall Demand, at \$5,987,513.69, exceeds available insurance proceeds. Accordingly, the Offerrall Demand does not appear to have been a valid *Stowers* demand. Accordingly, there appears to have been a material mutual mistake between Offerrall and the Insurers rendering the purported informal settlement unenforceable -- to the extent it ever was enforceable. The purported informal settlement, to the extent it is an agreement, remains unperformed, and SEM continues to have whatever rights it has under the Insurance Policies or applicable law to oppose the purported informal settlement. Further, SEM has (and expressly reserves) whatever rights, remedies, claims, positions and arguments it may have against the Insurers under the policies and applicable law to argue that the “purported informal settlement” was imposed upon SEM by the Insurers in bad faith or otherwise in violation of applicable law. Additionally, to the extent the purported informal settlement were determined to be an enforceable agreement, SEM reserves the right to reject the purported informal settlement to the extent it is an executory contract as that term is meant by section 365(a) of the Bankruptcy Code. SEM also reserves the right to seek to avoid the purported informal settlement as either a preference under section 547 of the Bankruptcy Code or a fraudulent transfer under section 548 of the Bankruptcy Code. The Debtor will make such decisions in connection with the Plan and the Bankruptcy Case.

Robert Davis, Joyce L. Davis, Waylon Davis, and Jerry Davis, joined as the petitioning creditors in commencing this Bankruptcy Case as an involuntary proceeding. The Debtor agreed to the entry of an order for relief to maximize the return to its creditors, to reorganize its debts and operations, and to emerge from the Bankruptcy Case with a confirmed plan to deal with its creditors.

III.

SIGNIFICANT PROCEEDINGS IN THE DEBTOR’S BANKRUPTCY CASE

3.01 The Insurance Proceeds Litigation

At the same time the Davis Family commenced this Bankruptcy Case, they filed an adversary proceeding against the Debtor and the Insurers seeking emergency relief from the Bankruptcy Court preventing any payment or other action in favor of Offerrall under the purported informal settlement or otherwise under the Insurance Policies. That action was originally styled and numbered *Davis et al. v. SEER Environmental Materials, LLC*, Adversary No. 16-05066-RBK, In the United States Bankruptcy Court for the Western District of Texas, San Antonio Division (the “Insurance Proceeds Litigation”). Therein, the Davis Family sought: (1) a declaration that the Insurance Proceeds are property of the Bankruptcy Estate pursuant to section 541(a), (2) a temporary restraining order prohibiting any payments under the Insurance Policies, and (3) a preliminary injunction prohibiting any payments under the Insurance Policies. A temporary restraining order was entered by the Bankruptcy Court on September 1, 2016. Offerrall was granted leave to intervene in the Insurance Proceeds Litigation on September 9, 2016. The Debtor moved to realign the parties in the Insurance Proceeds Litigation, which was granted on

September 9, 2016. A contested hearing on the preliminary injunction was held on September 9, 2016. After considering the evidence presented and the argument of the parties, the Bankruptcy Court entered a temporary injunction as requested by the Davis Family preventing any payments being made under the Insurance Policies. On September 19, 2016, the Debtor, now the realigned plaintiff in the Insurance Proceeds Litigation filed an Amended Complaint for Declaratory and Related Relief, seeking a final determination that the Insurance Proceeds are property of the Bankruptcy Estate and prohibiting any distribution of the Insurance Proceeds except through a confirmed plan or as otherwise allowed by Bankruptcy Court order.

Offerrall has sought leave to file an interlocutory appeal regarding the entry of the preliminary injunction. That request remains pending. The Debtor will oppose an interlocutory appeal.

3.02 Approval of Employment of Kell C. Mercer and Kell C. Mercer, PC as Debtor's Bankruptcy Counsel

Kell C. Mercer (Kell C. Mercer, PC) is proposed to serve as the Debtor's bankruptcy counsel. An application to retain Mercer was filed on September 28, 2016 [Dkt #28].

3.03 Filing of Bankruptcy Schedules and SOFA

On September 21, 2016, the Debtor filed its Bankruptcy Schedules and Statement of Financial Affairs [Dkt #25].

3.04 The 341 Meeting of Creditors

On October 4, 2016, the Debtor attended the 341 meeting of creditors. The US Trustee concluded the meeting on the same date [Dkt #30].

3.05 Removal of the Offerrall Lawsuit to Bankruptcy Court

On September 22, 2016, the Debtor removed the Offerrall Lawsuit from Bastrop County District Court to the Bankruptcy Court. That case is now pending in Adversary Case No. 16-05074-RBK.

IV.

SUMMARY OF THE DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

4.01 Explanation of Chapter 11 of the Bankruptcy Code

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Under Chapter 11, a plan proponent, typically the debtor, attempts to restructure a debtor's financial affairs or effectively liquidate the debtor's assets for the benefit of the debtor's creditors, equity interest holders, and other parties-in-interest. The Chapter 11 plan of reorganization is a debtor's agreement with its creditors. The Chapter 11 plan of reorganization contains the terms and conditions for the operation and/or liquidation of a debtor's assets, and the treatment of Claims and interests of creditors and parties-in-interest.

Under § 1125 of the Bankruptcy Code, acceptances of a Chapter 11 plan of reorganization may be solicited by the debtor only after a written disclosure statement approved by a bankruptcy court as containing adequate information for each creditor or equity interest holder.

4.02 Terms of the Plan Control

The following represents the Debtor's best effort to describe the treatment afforded the Claims of the Creditors in various Classes. Creditors should be aware that the terms of the Plan control the treatment of all Claims. In the event of any inconsistencies between the Plan and this Disclosure Statement, the terms of the Plan shall be, in all events, determinative. The Debtor urges all Creditors to read the Plan for a complete understanding of the treatment of their Claims.

4.03 Treatment of Administrative Claims, Including Professional Fees and US Trustee Fees

Administrative Claims. Each holder of an Allowed Administrative Claim shall receive from the Debtor either: (i) the amount of such Allowed Administrative Claim in one Cash payment on the Effective Date or (ii) such other treatment as may be agreed upon in writing by the Debtor and the holder of the Allowed Administrative Claim. An Allowed Administrative Claim representing a liability incurred in the ordinary course of business of the Debtor shall be paid by the Debtor upon presentment or otherwise in accordance with the terms of the particular transaction and any agreements relating hereto.

Administrative Claim Bar Date. The Plan constitutes a motion to fix and establish a deadline to file Administrative Claims, such deadline being thirty (30) days following the Confirmation Date (the "Administrative Claim Bar Date"). Upon entry of the Confirmation Order, the Debtor shall provide notice of such Administrative Claim Bar Date to every Person that may assert an Administrative Claim against the Debtor. Applications for compensation and reimbursement filed by professionals employed under Section 327 of the Bankruptcy Code shall also be filed no later than thirty (30) days after the Confirmation Date, or by a date set by the Bankruptcy Court.

Administrative Claim Reserve. On the Effective Date, the Reorganized Debtor will fund the Administrative Claim Reserve in an amount sufficient to pay all Allowed Administrative Claims in full (other than those Administrative Claims to be paid in the ordinary course of business of the Reorganized Debtor or as otherwise agreed). The funds in the Administrative Claim Reserve shall be released and paid over to those holders of Allowed Administrative Claims. Any funds remaining in the Administrative Claim Reserve following payment of all Allowed Administrative Claims shall be released to the Reorganized Debtor for further use in accordance with the Plan.

Claims of Professionals. Any Claims of Professionals approved by the Court, and not previously paid pursuant to any orders approving such payments, shall be paid in Cash in such amounts as are Allowed by Final Order of the Court: (i) within five (5) days following the date such Claim of a Professional becomes an Allowed Administrative Claim or (ii) upon such other terms as may be mutually agreed upon between the holder of a Claim for Professional Fees and the Reorganized Debtor.

Claims of Professionals Bar Date. The Plan constitutes a motion to fix and establish a bar date of thirty (30) days after the Confirmation Date for the filing of final applications for allowances of compensation for services rendered and reimbursement of expenses incurred through the Confirmation Date. All Professionals seeking compensation for unpaid services rendered or reimbursement of expenses incurred through and including the Confirmation Date shall file their respective applications no later than such date as set forth in this Section. Upon entry of the Confirmation Order, the Debtor shall provide notice of such Professionals Bar Date to every Person that may assert a Claim for Professional fees against the Debtor.

Claims of Professionals Objection Deadline. The Plan constitutes a motion to fix and establish a deadline to object to timely filed Claims of Professionals, such deadline being thirty (30) days following the Professionals Bar Date.

Professionals Account. On the Effective Date, the Reorganized Debtor will fund the Professionals Account in an amount sufficient to pay all Allowed Claims of Professionals in full.

United States Trustee Requirements. All fees owing to the United States Trustee pursuant to 28 U.S.C. § 1930 shall be paid by the Reorganized Debtor in Cash as such fees become due. The Reorganized Debtor shall timely file quarterly post-confirmation reports until this case is closed, converted, or dismissed.

4.04 Classification and Treatment of Claims and Interests

The following are the classes and proposed treatment of Claims and Interests under the Plan.

Class	Impairment	Treatment
Class 1 – Allowed Priority Claims of Governmental Entities	Unimpaired	Each holder of an Allowed Priority Claim of a Governmental Entity shall be paid its Priority Claim in such amount as is Allowed, in full, in Cash, through equal Monthly Plan Payments, or as otherwise agreed, together with interest at the rate required by Bankruptcy Code section 511, or if applicable, the rate authorized by Texas Tax Code § 33.01, over a period through the fifth anniversary of the Petition Date. Each Governmental Entity shall retain its Liens until paid in full. There are not anticipated to be any Allowed Class 1 Claims.
Class 2 – Allowed Priority Claims of Non-Governmental Entities	Impaired	Each holder of an Allowed Priority Claim of a Non-Governmental Entity shall be paid its Priority Claim in such amount as is Allowed, in full, in Cash, on the Effective Date.

Class 3 – Allowed Secured Claims of Governmental Entities	Impaired	Each holder of an Allowed Secured Claim of a Governmental Entity shall be paid its Secured Claim in such amount as is Allowed, in full, in Cash, through equal Monthly Plan Payments, or as otherwise agreed, together with interest at the rate required by Bankruptcy Code section 506(b), or if applicable, the rate authorized by Texas Tax Code § 33.01, over a period through the fifth anniversary of the Petition Date. Each Governmental Entity shall retain its Liens until paid in full.
Class 4 – Allowed Secured Claim of Coastal Flow Measurement, Inc.	Unimpaired	Coastal shall receive full payment of its Allowed Secured Claim pursuant to the Pre-Petition Coastal Loan Documents without regard to any attempted acceleration or declaration of default thereunder, with any Pre-Petition arrearage satisfied, in full, in Cash, on the Effective Date. Coastal shall retain its liens until paid in full.
Class 5 – Allowed Secured Claim of Stephen K. Whitman	Unimpaired	Whitman shall receive full payment of his Allowed Secured Claim pursuant to the Pre-Petition Whitman Loan Documents without regard to any attempted acceleration or declaration of default thereunder, with any Pre-Petition arrearage satisfied, in full, in Cash, on the Effective Date. Whitman shall retain his liens until paid in full.
Class 6 – Allowed Vendor Claims	Impaired	Each holder of an Allowed Vendor Claim shall be paid its Claim in such amount as is Allowed, in full, in Cash, together with interest at the Plan Interest Rate, in six (6) equal installment payments commencing on the Effective Date and monthly thereafter, for six (6) consecutive months so long as there has been no Material Default by the Reorganized Debtor in treatment of Classes 1 through 5.

Class 7 – Allowed Tort Claims	Impaired	In full and final satisfaction, release, and discharge of each and every Allowed Tort Claim (including the alleged claims of CASA of Highland Lakes, Inc. a/n/f Aubree Offerrall, a minor, Joyce Davis, Robert Davis, and Waylon Davis, if Allowed), each Holder of an Allowed Class 7 Tort Claim shall have their Claims liquidated and Allowed (if allowable), consistent with the provisions of 28 U.S.C. § 157(b)(5) or through a settlement reached with the Debtor or the Reorganized Debtor and approved by the Bankruptcy Court. Any such Allowed Tort Claim shall be paid their Pro Rata share of the Available Insurance Proceeds. The alleged Tort Claims are unliquidated. The proof of claim deadline has not yet passed. The Debtor reserves all rights regarding liability with respect to the Tort Claims. The Debtor reserves all rights to seek to estimate the Tort Claims for any and all purposes allowed under the Bankruptcy Code and Rules.
Class 8 – SEM Affiliate Claims	Impaired	Holders of the Pre-Petition Affiliate Claims of Strategic Environmental & Energy Resources, Inc., REGS, LLC, and MV Technologies, LLC shall receive nothing on account of their claims unless and until holders of Allowed Claims in Classes 1 through 7 are paid in full.
Class 9 – Pre-Petition Equity Interests	Impaired	The Pre-Petition Interests of Strategic Environmental & Energy Resources, Inc. shall be cancelled on the Effective Date and Strategic Environmental & Energy Resources, Inc. shall receive nothing on account of its Pre-Petition Membership Interest.

4.05 Discharge of Claims

Except as otherwise expressly provided in the Plan, after the Effective Date, all Persons who have been, are, or may be holders of Claims against the Debtor arising on or before the Effective Date shall be enjoined from taking any of the following actions against or affecting the Debtor, their estates, and the estate property regarding such Claims (other than actions brought to enforce any rights or obligations under the Plan) to the fullest extent provided under Bankruptcy Code sections 1141 and 524:

(i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind against the Reorganized Debtor, its estate, or the estate property, including without limitation, the revested estate property, including, all suits, actions, and proceedings that are pending against the Debtor and/or the Reorganized Debtor on the

Effective Date, which shall be deemed withdrawn and dismissed with prejudice;

(ii) enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means, directly or indirectly, any judgment, award, decree, or order against the Debtor and/or Reorganized Debtor, its estate, or the estate property, including without limitation, the revested estate property;

(iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien against the Debtor and/or the Reorganized Debtor, its estate, or the estate property, including the revested estate property;

(iv) asserting any right of subrogation, setoff, or recoupment of any kind, directly or indirectly, against any obligation due the Debtor and/or the Reorganized Debtor, the estate, or the estate property, including without limitation, the revested estate property; and

(v) proceeding in any manner and in any place whatsoever that does not conform to or comply with the provisions of the Plan.

V. IMPLEMENTATION OF THE DEBTOR'S PLAN

5.01 Summary of the Implementation of the Plan

Revesting of Property of the Estate. Except as otherwise provided in the Plan, on the Effective Date, the Property of the Estate of the Debtor shall revest in the Reorganized Debtor. Subject to the terms and conditions of the Plan, the Reorganized Debtor may operate its business and use, acquire, and disburse Property without supervision by the Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules. As of the Effective Date, all Property of the Reorganized Debtor shall be free and clear of all Claims, Liens, encumbrances and other interests of Creditors, except as otherwise provided in the Plan.

Net Cash Flow from Operations. After the Effective Date, the Reorganized Debtor will continue to operate its business.

The Strategic Environmental & Energy Resources, Inc. Exit Capitalization. On or before the Effective Date, Strategic Environmental & Energy Resources, Inc. will fund the Exit Capitalization and will receive the New Membership Interests.

Litigation of Causes of Action. After the Effective Date, the Reorganized Debtor, in its sole discretion, shall evaluate the potential Causes of Action, including Avoidance Actions, and determine whether to pursue any such Causes of Action, including Avoidance Actions, for the benefit of the holders of Allowed General Unsecured Claims. The Debtor's Disclosure Statement of Financial Affairs identifies the parties who received payments and transfers from the Debtor, which payments and transfers may be avoidable under the Bankruptcy Code. In particular, Part 3 of the Debtor's Statement of Financial Affairs identifies those parties that

received transfers from the Debtor during the ninety (90) days preceding the Filing Date, which transfers may be avoidable under Chapter 5 of the Bankruptcy Code. The Reorganized Debtor will continue to litigate, compromise or otherwise resolve any Avoidance Actions and other Causes of Action commenced prior to the Effective Date by the Debtor-in-Possession.

THE PLAN DOES NOT AND IS NOT INTENDED TO RELEASE CAUSES OF ACTION, INCLUDING AVOIDANCE ACTIONS, AND ALL SUCH RIGHTS OF CAUSES OF ACTION, INCLUDING AVOIDANCE ACTIONS, ARE SPECIFICALLY RESERVED IN FAVOR OF THE REORGANIZED DEBTOR ON BEHALF OF THE HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS.

Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtor has or may have against the Insurance Companies, including under the Insurance Policies and/or applicable law.

After the Effective Date, the Reorganized Debtor shall prosecute, compromise or otherwise resolve any and all Causes of Action, including Avoidance Actions that the Reorganized Debtor determines should be pursued. The Reorganized Debtor shall retain counsel on an appropriate basis to prosecute any Causes of Action including the Avoidance Actions. The Bankruptcy Court shall retain jurisdiction to adjudicate any and all Causes of Action including Avoidance Actions and approve any settlement thereof. The net proceeds of the Causes of Action, including Avoidance Actions, shall be distributed, first, in payment of the litigation fees and expenses of the Reorganized Debtor, and second, for distribution to holders of Allowed Claims.

Management of the Reorganized Debtor. Upon the Effective Date, Strategic Environmental & Energy Resources, Inc. shall serve as the Manager of the Reorganized Debtor. The officers and employees of the Reorganized Debtor are expected to remain.

Effective Date of Plan. The Effective Date of the Plan is the first business day following the date that is fourteen days after the entry of the order of confirmation. If, however, a stay of the confirmation order is in effect on that date, the effective date will be the first business day after the date on which the stay of the confirmation order expires or is otherwise terminated.

Insurance Neutrality. Unless otherwise expressly agreed to by an Insurer in writing, notwithstanding any provision in the Plan or the Confirmation Order, including any provision that purports to be preemptory or supervening, nothing contained in any such documents or in this paragraph shall have the effect of impairing the Insurers' legal, equitable, or contractual rights and/or obligations in any respect with respect to any Insured Claim, which shall be determined solely by and in accordance with the allegedly applicable Insurance Policies. Unless otherwise expressly agreed to by an Insurer in writing, nothing in the Plan or the Confirmation Order that purports to be preemptory or supervening, shall, under any theory:

(a) constitute, or be deemed to constitute, a trial, adjudication, judgment, hearing on the merits, finding, conclusion, other determination, evidence, or suggestion of any determination establishing the liability of any Insurer (in the aggregate or otherwise) relating to any Alleged Insured Claim;

(b) establish the liability or obligation of the Debtor with respect to any Alleged Insured Claim that binds any Insurer, individually or with another Insurer(s), including whether the Debtor is or was liable on account of such claim or have suffered an insured loss;

(c) constitute, or be deemed to constitute, a determination of the reasonableness of the amount of any Claim, including any Alleged Insured Claim, either individually or in the aggregate with other Claims;

(d) grant, or be deemed to grant, to any Entity any right to sue any Insurer directly in connection with any Alleged Insured Claim;

(j) constitute, or be deemed to constitute, a determination that any Insurer has any defense or indemnity obligation with respect to any Alleged Insured Claim. The Insurers shall retain, and be permitted to assert, all of the Debtor's defenses to liability in connection with any Alleged Insured Claim and that the Insurers' rights to assert all such underlying defenses to liability and all such defenses to coverage of any Alleged Insured Claim will not be impaired in any way by the Plan or the Confirmation Order.

Except as expressly set forth therein, nothing in the Plan or the Confirmation Order shall diminish or impair any of the claims, rights and defenses of the Debtor or the Reorganized Debtor, if any, both legal and equitable, arising out of or relating to any of the Insurance Policies.

Under the Plan, the Reorganized Debtor retains the Debtor's rights and obligations under each of the Insurance Policies, subject to the terms and conditions of each Insurance Policy.

Conditions to Occurrence of Effective Date. The effectiveness of the Plan is subject, in addition to the requirements provided in § 1129 of the Bankruptcy Code, to satisfaction of the following conditions precedent (any of which may be waived by the Debtor):

- a. All actions, documents and agreements necessary to implement the Plan shall have been effected or executed;
- b. The Debtor shall have received all authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions or documents that are determined by the Debtor to be necessary to implement the Plan; and
- c. Entry of a Confirmation Order that is a Final Order in form and substance suitable to Debtor.

Retention of Jurisdiction. On and after the Effective Date, the Court shall retain and have exclusive jurisdiction over this Bankruptcy Case for the purposes stated in items (1) through (14) below. If the Court abstains from exercising, or declines to exercise jurisdiction or is otherwise without jurisdiction over any matter arising out of or relating to this Bankruptcy Case, this section shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

- a. To determine any and all objections and proceedings involving the allowance, estimation, classification and subordination of Claims, including any counterclaim;
- b. To determine any and all explanations for allowance of compensation and reimbursement of expenses and any other fees and expenses authorized to be paid or reimbursed under the Bankruptcy Code or the Plan;
- c. To determine any applications pending on the Effective Date for the rejection or assumption of executory contracts or unexpired leases, or for the assumption and assignment, as the case may be, of executory contracts or unexpired leases to which the Debtor is a party or with respect to which the Debtor may be liable, and to hear and determine, and if need be to liquidate, any and all Claims arising therefrom;
- d. To determine any and all applications, adversary proceedings, and contested or litigated matters that may be pending on the Effective Date;
- e. To consider any modifications of the Plan, remedy any defect or omission, or reconcile any inconsistency in any order of the Court, including the Confirmation Order, to the extent authorized by the Bankruptcy Code;
- f. To determine all controversies, suits, disputes and proceedings that may arise in connection with the interpretation, enforcement, Consummation, or performance of the Plan or any Person's obligations hereunder;
- g. To determine all controversies, suits, disputes and proceedings that may arise in connection with the Plan;
- h. To hear and determine any Claim belonging to the Debtor, and to consider and act on the compromise and settlement of any other Claim against, or cause of action asserted by, the Debtor;
- i. To recover all assets of the Debtor and Property of the Debtor's Estate, wherever located;
- j. To hear and determine matters concerning state, local, and federal taxes in accordance with §§ 346, 505, and 1146 of the Bankruptcy Code (including any

requests for expedited determinations under § 505(b) of the Bankruptcy Code filed, or to be filed, with respect to tax returns for any and all taxable periods ending after the Petition Date through, and including, the date that any final distribution is made);

- k. To enforce the Plan Injunction pending discharge set forth in Article 12 herein;
- l. To enter a Final Decree closing the Bankruptcy Case;
- m. To issue orders in aid of execution of the Plan to the extent authorized by § 1142 of the Bankruptcy Code; and
- n. To determine such other matters as may be set forth in the Confirmation Order or which may arise in connection with the Plan or the Confirmation Order.

Modification of Plan. Modifications of the Plan may be proposed in writing by the Debtor at any time before Confirmation, provided that the Plan, as modified, meets the requirements of §§ 1122 and 1123 of the Bankruptcy Code, and the Debtor has complied with § 1125 of the Bankruptcy Code. The Plan may be modified at any time after Confirmation and before its substantial Consummation, provided that the Plan, as modified, meets the requirements of §§ 1122 and 1123 of the Bankruptcy Code, and the Court after notice and hearing, confirms the Plan, as modified, under § 1129 of the Bankruptcy Code, and the circumstances warrant such modification. At any time after the Confirmation Date, the Reorganized Debtor, without the approval of the Court, may modify the Plan to remedy any defect or omission, or reconcile any such inconsistencies in the Plan or in the Confirmation Order, as such matters may be necessary to carry out the purposes, intent, and effect of the Plan, provided that such modification does not materially or adversely affect the interest of Creditors.

Deemed Acceptance to Modifications. A holder of a Claim that has accepted or rejected the Plan shall be deemed to have accepted or rejected, as the case may be, such Plan as modified, unless, within the time fixed by the Bankruptcy Court, such holder changes its previous acceptance or rejection.

Revocation of Plan. The Debtor reserves the right to revoke and withdraw the Plan before the entry of the Confirmation Order. If the Debtor revokes or withdraws the Plan, or if confirmation of the Plan does not occur, then the Plan shall be deemed null and void and nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against the Debtor or any other Person, or to prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor.

Material Default Provisions. A failure to timely make a payment to a holder of an Allowed Claim, except a Class 4 Claim, pursuant to the terms of the Plan shall be an “Event of Default.” Following an Event of Default, each holder of an Allowed Claim shall have the right to enforce their rights under the Plan by sending a written “Notice of Default” to the

Reorganized Debtor at the following address:

SEER Environmental Materials, LLC
751 Pine Ridge Road
Golden, CO 80403

with a copy to:

Kell C. Mercer
Kell C. Mercer, PC
1602 E. Cesar Chavez Street
Austin, Texas 78702

If the Event of Default is not cured within ninety (90) days after service of a written Notice of Default then a “Material Default” shall have occurred and the holder of an Allowed Claim having provided such Notice of Default may enforce their rights as provided by the Plan.

5.02 The Reorganized Debtor’s Obligations Under the Plan

Following the Effective Date, the Reorganized Debtor may pay its post-Effective Date operating expenses in the ordinary course of its business without notice or orders of this Court. The Reorganized Debtor shall continue to perform the statutory duties of the Debtor, as applicable, and those conferred by and contemplated under the Plan until this Case is closed.

5.03 Exemption from Transfer Taxes

Pursuant to § 1146(c) of the Bankruptcy Code, the issuance, transfer, or exchange of notes or equity securities under the Plan or the making or delivery of any deed or other instrument or transfer under, in furtherance of, or in connection with the Plan, including without express or implied limitation, any transfers to or by the Reorganized Debtor shall not be subject to any transfer, sales, stamp, or other similar tax.

5.04 Claims Objections

Except as otherwise provided in the Plan in connection with Administrative Claims and Claims of Professionals, objections to Claims must be filed with the Court and served in accordance with the Bankruptcy Rules by the later of (i) ninety (90) days following the Confirmation Date or (ii) thirty (30) days following the date such proof of Claim was timely filed; otherwise, such Claims shall be deemed Allowed in accordance with § 502 of the Bankruptcy Code, unless an extension of such time period is sought by the Reorganized Debtor.

Prior to the expiration of twenty-one (21) days from receipt of an objection, the claimant whose Claim has been objected to must file with the Court and serve upon the objecting party a response to such Claim objection. Failure to file such a response within the twenty-one (21) day time period shall cause the Court to enter a default judgment against the non-responding claimant and thereby grant the relief requested in the claim objection.

5.05 Contingent Claims

Until a Contingent Claim becomes an Allowed Claim or is Disallowed, the Claim will be treated as a Disputed Claim for all purposes under the Plan. The holder of a Contingent Claim will be entitled to a distribution under the Plan only when the Contingent Claim becomes an Allowed Claim. Any Contingent Claim for reimbursement or contribution held by a Person that may be liable with the Debtor on a claim of a Creditor is Disallowed as of the Effective Date if: (a) that Creditor's Claim is Disallowed; (b) the Claim for reimbursement or contribution is contingent as of the Effective Date; or (c) that Person asserts a right of subrogation to the rights of the Creditor under § 509 of the Bankruptcy Code.

5.06 Distributions on Allowance or Disallowance of Disputed Claims

No distributions will be made to any holder of a Claim unless and until the Claim becomes an Allowed Claim. If a Claim is not an Allowed Claim as of the Effective Date, distributions on account of that Claim will commence only when the Claim becomes an Allowed Claim. If a Disputed Claim becomes an Allowed Claim, the Reorganized Debtor will make a distribution in accordance with the terms of the Plan applicable to Claims of the Class in which that Claim is placed.

5.07 Undeliverable or Returned Distributions

Any distribution to be made to a Creditor will be sent to that Creditor at the address set forth on the proof of claim filed for such Creditor, or if no proof of claim is filed, at the address set forth on the proof of claim filed for such Creditor, or if no proof of claim is filed, at the address set forth on the Debtor's Schedules. In the event that a distribution as herein provided is returned as undeliverable, or a distribution is returned on account of there being no payment due to the affected Creditor, the Reorganized Debtor shall hold such distribution for the affected Creditor for a period of sixty (60) days following the Date of that distribution for the benefit of the Creditor. If the affected Creditor does not make a demand, in writing, for such unclaimed distribution within the sixty-day period, the Creditor shall forfeit all entitlement to the distribution, and the distribution shall revert to the Reorganized Debtor.

All un-cashed distributions shall be handled in accordance with this Article, unless provided otherwise by applicable law. Checks issued by the Debtor with respect to any Allowed Claim shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. The holder of the Allowed Claim to whom such check originally was issued shall make a request for re-issuance of any check to the Reorganized Debtor. Any Claim with respect to a voided check shall be made on or before thirty (30) days after the expiration of the ninety (90) day period following the date of issuance of such check; provided however checks issued for the final distribution that become null and void in accordance with provisions contained herein shall not be re-issued and the holders of such Claims shall waive any right to the reissuance of such checks. After such date, all funds held on account of such voided check shall be remitted to the Reorganized Debtor; the holder of any such Claim shall not be entitled to any other or further distribution under the Plan on account of such Claim and such Claim shall be deemed Disallowed for purposes of any such distribution.

5.08 Establishment of a Disputed Claims Reserve

On the occasion of each payment required under the Plan, the Reorganized Debtor shall deposit Cash in a segregated, interest bearing account in such amount necessary to pay all Disputed Claims in accordance with the terms of the Plan if such Claims were to become Allowed Claims. This account shall be called Disputed Claim Reserve. The Reorganized Debtor shall hold the Disputed Claim Reserve in trust for the benefit of the holders of Allowed Claims whose distributions are unclaimed and the holders of Disputed Claims pending determination of their entitlement thereto under the terms of the Plan. When a Disputed Claim becomes an Allowed Claim, the Reorganized Debtor shall release and deliver the distributions reserved for such Allowed Claims (net of distribution costs) from the Disputed Claim Reserve. To the extent that any funds exist in the Disputed Claim Reserve after resolution of all Disputed Claims and distribution to all Allowed Claims, such funds shall be released to the Reorganized Debtor.

5.09 Additional Charges

Except as may be expressly provided in the Plan or allowed by the Bankruptcy Court, no interest, penalty, attorney's fee or late charge shall be allowed or paid with respect to any Claim.

5.10 Treatment of Executory Contracts and Unexpired Leases

a. Assumption or Rejection of Executory Contracts and Unexpired Leases. The Debtor assumes the executory contracts and/or unexpired leases identified on *Schedule 6.1* of the Plan upon the Effective Date of the Plan as provided in Article VII. On the Effective Date, each of the Insurance Policies shall, as applicable, be deemed assumed to the extent such Insurance Policies are Executory Contracts of the Debtor under section 365 of the Bankruptcy Code. Regardless of whether any Insurance Policy is or is not an Executory Contract, on and after the Effective Date, the Insurance Policies will remain valid and enforceable in accordance with their terms, shall not be impaired by the Plan or Confirmation Order, and the Debtor and the Insurers will perform their respective obligations to one another, if any, under the Insurance Policies. Upon the Effective Date of the Plan, the Debtor will be conclusively deemed to have rejected all executory contracts and/or unexpired leases not expressly assumed under section 6.1 of the Plan, or before the date of the order confirming the Plan.

b. Objections to Assumption and Assignments of Executory Contracts and Unexpired Leases

To the extent that any party to an Executory Contract or unexpired lease identified for assumption: (i) asserts arrearages or damages pursuant to § 365(b)(1) of the Bankruptcy Code in an amount different from the amount, if any, set forth in the Debtor's Schedules; (ii) has any objection to the proposed adequate assurance of future performance, if required; or (iii) has any other objection to the proposed assumption or cure of a particular Executory Contract or unexpired lease on the terms and conditions provided for herein, all such asserted arrearages or damages, and any other objections shall be filed and served within the same deadline and in the

same manner established for filing objections to Confirmation.

Failure to assert arrearages or damages different from the amount set forth in the Schedules, or failure to file an objection within the time period set forth above, shall constitute consent to the assumption on the terms provided for herein, including acknowledgement that: (i) the Debtor has provided adequate assurance of future performance, if required; (ii) the amount identified for “cure,” if any, is the amount necessary to compensate for any and all outstanding defaults or actual pecuniary loss under the Executory Contract or unexpired lease to be assumed; and (iii) no other defaults exist under such Executory Contract or unexpired lease. If an objection to assumption and assignment is filed based upon lack of adequate assurance of future performance or otherwise, and the Court determines that the Debtor cannot assume the Executory Contract or unexpired lease either as proposed or as may be proposed pursuant to a modified proposal submitted by the Debtor, then the Executory Contract or unexpired lease shall be deemed to have been rejected.

c. Payments Related to Assumption of Executory Contracts and Unexpired Leases

Any monetary defaults, including claims for actual pecuniary loss, under each Executory Contract and unexpired lease to be assumed under the Plan shall be satisfied, pursuant to § 365(b)(1) of the Bankruptcy Code, by payment of the cure amount, if any, or as otherwise agreed by the parties, or as ordered by the Bankruptcy Court in cash within ninety (90) days following the Effective Date, or on such other terms as may be agreed to by the parties to such Executory Contract or unexpired lease. In the event of a dispute regarding: (i) the amount of any cure or pecuniary loss payment; (ii) the ability of Reorganized Debtor to provide adequate assurance of future performance under the contract or lease to be assumed, if required; (iii) any other matter pertaining to assumption, the cure, or pecuniary loss payments required by § 365(b)(1) of the Bankruptcy Code shall be made within a reasonable time following entry of a Final Order resolving the dispute and approving assumption.

d. Bar Date for Rejection Damages

If the rejection of an Executory Contract or unexpired lease pursuant to Article 6 of the Plan gives rise to a Rejection Claim by the other party or parties to such contract or lease, such Rejection Claim, to the extent that it is timely Filed and is an Allowed Claim, shall be classified in Class 5; provided, however, that the Unsecured Claim arising from rejection shall be forever barred and shall not be enforceable against the Debtor, the Reorganized Debtor, their successors or properties, unless a proof of Claim is Filed and served on the Reorganized Debtor within thirty (30) days after the Bankruptcy Court’s entry of the Confirmation Order.

5.11 Pending Claims and Causes of Action

After the Effective Date, the Reorganized Debtor, in its sole discretion, shall evaluate the potential Causes of Action, including Avoidance Actions, and determine whether to pursue any such Causes of Action, including Avoidance Actions, for the benefit of the holders of Allowed

General Unsecured Claims. The Debtor's Disclosure Statement of Financial Affairs identifies the parties who received payments and transfers from the Debtor, which payments and transfers may be avoidable under the Bankruptcy Code. In particular, Part 3 of the Debtor's Statement of Financial Affairs identifies those parties that received transfers from the Debtor during the ninety (90) days preceding the Filing Date, which transfers may be avoidable under Chapter 5 of the Bankruptcy Code. The Reorganized Debtor will continue to litigate, compromise or otherwise resolve any Avoidance Actions and other Causes of Action commenced prior to the Effective Date by the Debtor-in-Possession.

THE PLAN DOES NOT AND IS NOT INTENDED TO RELEASE CAUSES OF ACTION, INCLUDING AVOIDANCE ACTIONS, AND ALL SUCH RIGHTS OF CAUSES OF ACTION, INCLUDING AVOIDANCE ACTIONS, ARE SPECIFICALLY RESERVED IN FAVOR OF THE REORGANIZED DEBTOR ON BEHALF OF THE HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS.

After the Effective Date, the Reorganized Debtor shall prosecute, compromise or otherwise resolve any and all Causes of Action, including Avoidance Actions that the Reorganized Debtor determines should be pursued. The Reorganized Debtor shall retain counsel on an appropriate basis to prosecute any Causes of Action including the Avoidance Actions. The Bankruptcy Court shall retain jurisdiction to adjudicate any and all Causes of Action including Avoidance Actions and approve any settlement thereof. The net proceeds of the Causes of Action, including Avoidance Actions, shall be distributed, first, in payment of the litigation fees and expenses of the Reorganized Debtor, and second, for distribution to holders of Allowed Claims.

THE FOLLOWING DISCUSSION IS NOT INTENDED TO BE EXHAUSTIVE AND SHALL NOT LIMIT OR MODIFY ANY CLAIMS OR CAUSES OF ACTION OF THE ESTATE, INCLUDING AVOIDANCE ACTIONS. ALL CLAIMS OF THE BANKRUPTCY ESTATE ARE BEING PRESERVED AND TRANSFERRED TO THE REORGANIZED DEBTOR UNDER THE PLAN. ADDITIONALLY, THE PLAN DOES NOT AND IS NOT INTENDED TO RELEASE ANY CAUSES OF ACTION.

Any and all Causes of Action that the Debtor may have, including, but not limited to Avoidance Actions, which may be enforceable under any statute, shall be preserved and shall constitute Property of the Estate to be conveyed to Reorganized Debtor in accordance with the Plan. After the Effective Date, the Reorganized Debtor, in its sole discretion, shall evaluate the potential Causes of Action including, but not limited to, Avoidance Actions and determine whether to pursue any such Causes of Action for the benefit of the holders of Allowed General Unsecured Claims. The Reorganized Debtor may prosecute, compromise, or otherwise resolve any and all Causes of Action, including Avoidance Actions, that the Reorganized Debtor determines should be pursued. The Reorganized Debtor shall retain counsel on an appropriate basis to prosecute any Causes of Action, including Avoidance Actions. The Bankruptcy Court shall retain jurisdiction to adjudicate any and all Causes of Action including Avoidance Actions and approve any settlement thereof. The Net Proceeds of the Causes of Action, including the Avoidance Actions, shall be distributed, first, in payment of the litigation fees and expenses of the

Reorganized Debtor, and, second, for pro rata distribution to the holders of Allowed General Unsecured Claims.

The Debtor's Statement of Financial Affairs identifies the parties who received payments and transfers from the Debtor, which payments and transfers may be avoidable under the Bankruptcy Code. In particular, Part 3 of the Debtor's Statement of Financial Affairs identifies those parties that received transfers from the Debtor during the ninety (90) days preceding the Filing Date, which transfers may be avoidable under Chapter 5 of the Bankruptcy Code.

The Debtor may have Causes of Action, including Avoidance Actions, against the above-listed creditors. The Reorganized Debtor may prosecute, compromise, or otherwise resolve any and all Causes of Action, including Avoidance Actions, against the above-listed creditors.

ADDITIONALLY, YOU MAY BE SUED IF:

1. You were or are a creditor and you received a payment on a prior debt within ninety (90) days before the Petition Date;
2. You were an insider of the Debtor and you received a payment on a prior debt within one (1) year before the Petition Date;
3. You received any payments or property from the Debtor for goods or services you did not deliver or provide before the Petition Date;
4. You received any payments of property from the Debtor without providing reasonably equivalent value;
5. You received pre-payments, advances, or deposits from the Debtor which you did not earn;
6. You were involved in pending litigation with the Debtor at the time of the Petition Date or have been sued thereafter;
7. You owe the Debtor any money under a contract or as a result of your breach of contract with the Debtor;
8. You are an Insurer of the Debtor under the Insurance Policies and you breached a duty or obligation under an Insurance Policy and/or applicable law;
9. Potential claims against you or any of your affiliates are described or referred to in this Disclosure Statement; or
10. The Debtor has any claims against you under state or federal law, whether in contract or in tort, whether known or unknown.

VI.
CONFIRMATION OF THE PLAN

6.01 Feasibility

As a condition to confirmation of a plan, § 1129 of the Bankruptcy Code requires, among other things, that the Bankruptcy Court determine that confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor. The Debtor is preparing financial statements that reflect the projected income and expenses of the Reorganized Debtor during the Plan Period (the “Projections”). The Projections will be filled in a supplement to this Disclosure Statement prior to the hearing on approval of the Disclosure Statement.

6.02 Best Interests Test

In order to confirm the Plan, the Court must find that each holder of an impaired Claim or Equity Interest either (i) accepted the Plan or (ii) received or retained under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive if the debtor was liquidated under Chapter 7 of the Bankruptcy Code. In a typical Chapter 7 case the debtor ceases operations and a Chapter 7 trustee is appointed to conduct an orderly liquidation of the Debtor’s assets. The liquidation proceeds, net of trustee’s fees and other costs and expenses incurred in conducting the liquidation, are distributed to Creditors in accordance with their rights and statutorily prescribed priorities of payment under the Bankruptcy Code.

If this Case were converted to a Chapter 7 liquidation, the Court may lift the automatic stay to permit Coastal and Whitman to foreclose upon their collateral. A foreclosure by would likely eliminate any possible distribution to other creditors.

Alternatively, a Chapter 7 Trustee may try to market and sell the Debtor’s assets. The Debtor believes that a sale of the Debtor’s assets by the Chapter 7 Trustee would likely not provide any recovery to holders of Allowed General Unsecured Claims. Once the assets are sold, and subject to prior orders of the Court, Claims would be paid in the following order:

1. Allowed Claims of Secured Creditors (Governmental Entities, Coastal and Whitman);
2. The Chapter 7 Trustee’s expenses, including the fees and expenses of Professionals retained by the Chapter 7 Trustee to assist in the marketing and sale of the Property;
3. Expenses incurred during the Chapter 11 case and allowed by the Court, including Allowed Administrative Claims from the Chapter 11 period of the case; and
4. A Pro Rata distribution of any remaining funds to the Allowed Claims of General Unsecured Creditors.

Given the foregoing, the Debtor believes that holders of Allowed General Unsecured Claims would receive under a distribution under the Plan that is equal to, if not substantially greater than, what they would receive in a Chapter 7 liquidation.

VII.
ALTERNATIVES TO THE PLAN

7.01 General

The Debtor believes that the Plan affords the holders of Claims the potential for the greatest realization on the Debtor's assets and, therefore, is in the best interests of such holders. If the Plan is not confirmed, however, the theoretical alternatives include: (a) an alternative plan of reorganization; (b) liquidation of the Debtor under Chapter 7 of the Bankruptcy Code; or (c) dismissal of the Chapter 11 Case.

7.02 Alternative Plans

If the Plan is not confirmed, the Debtor or any other party in interest in the case could attempt to formulate and propose a different plan. The Debtor is not aware of any potential alternative plans at this time.

7.03 Liquidation Under Chapter 7 or Dismissal

See section 6.02 above. Given the foregoing, the Debtor believes that holders of Allowed General Unsecured Claims would receive under a distribution under the Plan that is equal to, if not substantially greater than, what they would receive in a Chapter 7 liquidation.

VIII.
RISK FACTORS

The Projections are based on numerous assumptions that are an integral part of the Projections. The assumptions and estimates underlying the Projections are inherently uncertain, and are subject to business risk, economic risk, competitive risk, and other uncertainties that could materially affect the accuracy of the Projections. Consequently, the Projections contained in this Disclosure Statement are not intended to be, nor should they be received as, representations that the Projections will be achieved.

IX.
CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The transactions contemplated by the confirmation of the Plan may have an impact on the tax treatment received with respect to distributions under the Plan. That impact may be adverse to a creditor or interest holder. The Debtor has attempted to structure the Plan to preserve any valuable tax attributes.

An analysis of federal income tax consequences of the Plan to Creditors, interest holders, and the Debtor requires a review of the Internal Revenue Code, the Treasury regulations promulgated

thereunder, judicial authority, and current administrative rulings and practice. The Plan and its related tax consequences are complex. Neither the Debtor nor the Debtor's counsel have requested a ruling from the Internal Revenue Service with respect to these matters. Accordingly, no assurance can be given as to the Internal Revenue Service's interpretation of the Plan.

THE TRANSACTION CONTEMPLATED BY THE CONFIRMATION OF THE PLAN MAY HAVE AN IMPACT ON THE TAX TREATMENT OF ANY CREDITOR OR INTEREST HOLDER. THAT IMPACT MAY BE ADVERSE TO THE CREDITOR OR INTEREST HOLDER. NOTHING HEREIN INTENDED TO BE ADVICE OR OPINION AS TO THE TAX IMPACT OF THE PLAN ON ANY INDIVIDUAL CREDITOR OR INTEREST HOLDER. EACH CREDITOR OR INTEREST HOLDER IS CAUTIONED TO OBTAIN INDEPENDENT AND COMPETENT TAX ADVICE PRIOR TO VOTING ON THE PLAN.

X.
JURISDICTION OF THE COURT

The Bankruptcy Court shall retain and have exclusive jurisdiction over this Case for the purposes stated in items one through thirteen below. If the Bankruptcy Court abstains from exercising, or declines to exercise jurisdiction, or is otherwise without jurisdiction over any matter arising out of or relating to this Case, this section shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

1. To determine any and all objections and proceedings involving the allowance, estimation, classification and subordination of Claim, including any counterclaim;
2. To determine any and all applications for allowance of compensation and reimbursement of expenses and any other fees and expenses authorized to be paid or reimbursed under the Bankruptcy Code or the Plan;
3. To determine any applications pending on the Effective Date for the rejection or assumption of executory contracts or unexpired leases or for the assumption and assignment, as the case may be, of executory contracts or unexpired leases to which the Debtor is a party or with respect to which the Debtor may be liable, and to hear and determine, and if need be to liquidate, any and all Claims arising therefrom;
4. To determine any and all applications, adversary proceedings, and contested or litigated matters that may be pending on the Effective Date;
5. To consider any modifications of the Plan, remedy any defect or omission or reconcile any inconsistency in any order of the Court, including the Confirmation Order, to the extent authorized by the Bankruptcy Code;
6. To determine all controversies, suits, disputes and proceedings that may arise in

connection with the interpretation, enforcement, consummation or performance of the Plan or any Person's obligations hereunder;

7. To determine all controversies, suits, disputes and proceedings that may arise in connection with the Plan;
8. To hear and determine any Claim belonging to the Debtor, and to consider and act on the compromise and settlement of any other Claim against, or cause of action asserted by, the Debtor;
9. To recover all assets of the Debtor and property of the Debtor's Estate, wherever located;
10. To hear and determine matters concerning state, local, and federal taxes in accordance with §§ 346, 505, and 1146 of the Bankruptcy Code (including any requests for expedited determinations under § 505(b) of the Bankruptcy Code filed, or to be filed, with respect to tax returns for any and all taxable periods ending after the Petition Date through, and including, the date that any final distribution is made);
11. To enter a Final Decree closing the Case;
12. To issue orders in aid of execution of the Plan to the extent authorized by § 1142 of the Bankruptcy Code; and
13. To determine such other matters as may be set forth in the Confirmation Order or which may arise in connection with the Plan or the Confirmation Order.

XI. **MISCELLANEOUS**

11.01 Amendment or Modification of the Plan

The Debtor's Plan may be amended or modified by the Debtor prior to the Confirmation Hearing pursuant to § 1127(a) of the Bankruptcy Code, and, to the extent applicable, Bankruptcy Rule 3019. Post-confirmation amendments or modifications of the Plan may be allowed by the Court under § 1127(b) of the Bankruptcy Code if the proposed amendment or modification is offered before the Plan has been substantially consummated. The sole right to amend or modify the Plan at any time shall be reserved to the Debtor and the Reorganized Debtor.

XII.
CONCLUSION & RECOMMENDATION

THE DEBTOR BELIEVES THAT CONFIRMATION OF THE PLAN IS PREFERABLE TO ANY OF THE ALTERNATIVES DESCRIBED ABOVE AND THAT THE PLAN IS DESIGNED TO PROVIDE GREATER RECOVERIES THAN THOSE AVAILABLE IN ANY OTHER FORM OF LIQUIDATION. ANY OTHER ALTERNATIVE WOULD CAUSE SIGNIFICANT DELAY AND UNCERTAINTY, AS WELL AS ADDITIONAL ADMINISTRATIVE COSTS. THUS, THE DEBTOR RECOMMENDS CONFIRMATION OF THE PLAN.