

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division

In re:

OYSTER COMPANY OF VIRGINIA, LLC<sup>1</sup>

Debtor

Case No.

16-34750-KLP

Chapter

11

**DISCLOSURE STATEMENT PURSUANT TO SECTION 1125  
OF THE BANKRUPTCY CODE OYSTER COMPANY OF VIRGINIA, LLC**

**July 5, 2017**

**Tavener & Beran, PLC  
20 North Eighth Street, Second Floor  
Richmond, VA 23219  
(804) 783-8300 Telephone  
(804) 783-0178 Telecopy  
Counsel to the Oyster Company of Virginia, LLC**

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<sup>1</sup> The debtor's principal place of business is 838 Long Point Lane, Topping, VA 23169-2121 and the last four digits of the debtor's EIN number are 7942.

**The Oyster Company of Virginia ask that you carefully consider the Plan and cast a Ballot in favor of the Plan, where applicable.**

**I. GLOSSARY**

Any term in the Disclosure Statement or Plan that is defined in §§ 101, 102, or 1101 of the Bankruptcy Code shall have the meaning assigned therein. The following terms, where they are used in the Disclosure Statement and in the Plan, shall have the meanings hereinafter assigned.

1.1. ***Administrative Claim and/or Administrative Expense Claim*** mean a Claim, other than a Fee Claim for costs and expenses of administration of this Chapter 11 Case under Bankruptcy Code sections 503(b), 507(b), or 1114(e)(2), and entitled to priority under Bankruptcy Code section 507(a)(2), including: (a) any actual and necessary costs and expenses, incurred after the Order for Relief Date, of preserving the Estate and operating the business of the Debtor; and (b) all other claims entitled to administrative claim status pursuant to a Final Order of the Bankruptcy Court.

1.2. ***Administrative Claims Bar Date*** means the first Business Day that is thirty (30) days following the Confirmation Date.

1.3. ***Allowed Claim*** means a Claim or any portion thereof (a) that has been allowed by a Final Order of the Bankruptcy Court, (b) that either (x) has been Scheduled as a liquidated, non-contingent, and undisputed Claim in an amount greater than zero on the Schedules, or (y) is the subject of a timely filed Proof of Claim as to which either (i) no objection to its allowance has been filed (either by way of objection or amendment to the Schedules) within the periods of limitation fixed by the Bankruptcy Code or by any order of the Bankruptcy Court or (ii) any objection to its allowance has been settled, waived through payment, or withdrawn, or has been denied by a Final Order, or (c) that is expressly allowed in a liquidated amount in this Plan; provided, however, that with respect to an Administrative Claim, “Allowed Claim” means an Administrative Claim as to which a timely written request for payment has been made in accordance with applicable bar dates for such requests set by the Bankruptcy Court (if such written request is required) in each case as to which the Debtor, or any other party in interest (x) has not interposed a timely objection or (y) has interposed a timely objection and such objection has been settled, waived through payment, or withdrawn, or has been denied by a Final Order; provided, further, however, that for purposes of determining the status (i.e., Allowed or Disputed) of a particular Claim prior to the expiration of the period as may be fixed for filing objections to the allowance or disallowance of Claims, any such Claim which has not been previously allowed or disallowed by a Final Order of the Bankruptcy Court or this Plan shall be deemed a Disputed Claim unless such Claim is specifically identified by the Debtor as being an Allowed Claim.

1.4. ***Assets*** mean all tangible and intangible assets of every kind and nature of the Debtor and its Estate, and all proceeds thereof, existing as of the Effective Date.

1.5. **Avoidance Actions** means Causes of Action arising under Bankruptcy Code sections 510, 541, 542, 544, 545, 547 through 551 and/or 553, or under related state or federal statutes and common law, including, without limitation, fraudulent transfer laws, whether or not litigation is commenced to prosecute such Causes of Action.

1.6. **Ballot** means each of the ballot forms distributed to each Holder of a Claim or Interest entitled to vote to accept or reject this Plan.

1.7. **Bankruptcy Code** means Title 11 of the United States Code, as now in effect or hereafter amended and as applicable to the Chapter 11 Case.

1.8. **Bankruptcy Court** means the United States Bankruptcy Court for the Eastern District of Virginia, or any other court with jurisdiction over the Chapter 11 Case.

1.9. **Bankruptcy Rules** means, collectively, the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended, the Federal Rules of Civil Procedure, as amended, and as applicable to this Chapter 11 Case or proceedings therein, as the case may be, and the Local Rules, as now in effect or hereafter amended.

1.10. **Business Day** means any day, other than a Saturday, Sunday or Legal Holiday (as defined in Bankruptcy Rule 9006(a)).

1.11. **Cash** means legal tender of the United States of America and equivalents thereof, which may be conveyed by check or wire transfer.

1.12. **Cage Investor** means a participant in the program designed to provide the opportunity to help accelerate the construction and deployment of oyster cages with oyster seeds into various watershed regions throughout the Chesapeake Bay, whereby specific cages are numbered and designated and are processed and credited to the participant in exchange for a return of principle and flat interest rate, in cage sequence, accordingly.

1.13. **Cage Investor Claim** means any Claim of a Cage Investor from an agreement with the Oyster Company of Virginia with respect to a numbered oyster cage.

1.14. **Cage Investor Contract** means the document executed by the respective Cage Investor and OCVA.

1.15. **Causes of Action** means any and all claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights of action, rights to legal remedies, rights to equitable remedies, rights to payment and Claims (as defined in Bankruptcy Code section 101(5)), whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise, that the Debtor and/or Estate may hold against any Entity.

1.16. **Chapter 11 Case and/or Case** means the case under Chapter 11 of the Bankruptcy Code commenced by Debtor in the Bankruptcy Court and referenced as Chapter 11 case number 16-34750-KLP.

1.17. **CBP** means Chesapeake Bay Program.

1.18. **Christian Barton** means counsel to the UCC.

1.19. **Claims Bar Date** means the bar date for filing Proofs of Claim for Claims arising prior to the Order for Relief Date against the Debtor, which date is March 27, 2017, with respect to Claims of Governmental Units, and March 8, 2017 with respect to all other Claims.

1.20. **Class** means a category of Holders of Claims or Interests, as described in Article II hereof.

1.21. **Collateral** means any property or interest in property of the Debtor's Estate subject to a Lien to secure the payment or performance of a Claim.

1.22. **Confirmation** means entry by the Bankruptcy Court of the Confirmation Order.

1.23. **Confirmation Date** means the last date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the Bankruptcy Court docket in this Chapter 11 Case.

1.24. **Confirmation Hearing** means the hearing held by the Bankruptcy Court to consider Confirmation of this Plan; as such hearing may be adjourned or continued from time to time.

1.25. **Confirmation Order** means the order entered by the Bankruptcy Court Confirming this Plan under Bankruptcy Code section 1129 in this Chapter 11 Case.

1.26. **Consummation or Consummate** means the occurrence of, or to achieve, the Effective Date.

1.27. **Contingent** means, with reference to a Claim, a Claim that has not accrued or is not otherwise payable and the accrual of which, or the obligation to make payment on which, is dependent upon a future event that may or may not occur.

1.28. **Creditor** means any Entity that holds a Claim against the Debtor.

1.29. **Debtor** means the Oyster Company of Virginia, LLC.

1.30. **Disallowed** means, with respect to a Claim, or any portion thereof, that such Claim (a) has been disallowed by a Final Order, (b) is Scheduled at zero or as contingent, disputed or unliquidated and as to which no Proof of Claim has been filed by the applicable Claims Bar Date or deemed timely filed pursuant to either the Bankruptcy Code or any Final Order or under applicable law, or (c) is not Scheduled, and as to which (i) no Proof of Claim has

been filed by the applicable Claims Bar Date or deemed timely filed pursuant to either the Bankruptcy Code or any Final Order or under applicable law, or (ii) no request for payment of an Administrative Claim has been filed by the Administrative Claims Bar Date, as appropriate, or deemed timely filed pursuant to either the Bankruptcy Code or any Final Order or under applicable law.

1.31. ***Disclosure Statement*** means the disclosure statement (including all exhibits and schedules thereto) dated July 5, 2017, relating to the Plan, distributed in accordance with Bankruptcy Code sections 1125 and 1126(b) and Bankruptcy Rule 3018, as may thereafter be amended.

1.32. ***Disputed Claim*** means a Claim, or any portion thereof, that has not been Allowed pursuant to the Plan or a Final Order, and:

(a) if no Claim has been filed, or deemed to have been filed, by the applicable Bar Date, which has been or hereafter is listed on the Schedules as unliquidated, contingent or disputed, and which has not been resolved by written agreement of the parties or an order of the Bankruptcy Court;

(b) if a Claim has been filed, or deemed to have been filed, by the applicable Claims Bar Date (i) a Claim for which a corresponding Claim has been listed on the Schedules as unliquidated, contingent or disputed; (ii) a Claim for which a corresponding Claim has been listed on the Schedules as other than unliquidated, contingent or disputed, but the amount of such Claim as asserted in the Claim varies from the amount of such Claim as listed in the Schedules; or (iii) a Claim as to which any party in interest has timely filed an objection or request for estimation in accordance with this Plan, the Bankruptcy Code, the Bankruptcy Rules and any orders of the Bankruptcy Court, or which is otherwise disputed in accordance with this Plan and applicable law, which objection, request for estimation or dispute has not been withdrawn, or determined by a Final Order;

(c) if a request for payment of an Administrative Claim has been filed or deemed to have been filed by the Administrative Claims Bar Date, an Administrative Claim as to which any party in interest has timely filed an objection or request for estimation in accordance with this Plan, the Bankruptcy Code, the Bankruptcy Rules, and any orders of the Bankruptcy Court, or which is otherwise disputed in accordance with this Plan and applicable law, which objection, request for estimation or dispute has not been withdrawn or determined by a Final Order;

(d) for which a Claim was required to be filed by order of the Bankruptcy Court, but as to which a Claim was not timely or properly filed; or

(e) that is disputed in accordance with the provisions of this Plan.

1.33. **Disputed Claim Amount** means (a) if a liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) the liquidated amount set forth in the Proof of Claim relating to the Disputed Claim as may have been modified by Final Order of the Bankruptcy Court; (ii) an amount agreed to by the Debtor and the Holder of such Disputed Claim; or (iii) if a request for estimation is filed by any party, the amount at which such Claim is estimated by the Bankruptcy Court; (b) if no liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) an amount agreed to by the Debtor and the Holder of such Disputed Claim or (ii) zero; or (c) if the Claim was listed on the Schedules as unliquidated, contingent or disputed and no Proof of Claim was filed, or deemed to have been filed, by the applicable Bar Date and the Claim has not been resolved by written agreement of the parties or an order of the Bankruptcy Court, zero.

1.34. **Distribution** means any distribution pursuant to this Plan to the Holders of Allowed Claims.

1.35. **Effective Date** means the Business Day the Plan becomes effective as provided in Article VIII hereof.

1.36. **Entity** has the meaning set forth in Bankruptcy Code section 101(15).

1.37. **EPA** means the US Environmental Protection Agency.

1.38. **Estate** means the estate of the Debtor created under Bankruptcy Code section 541.

1.39. **Exhibit** means an exhibit annexed to either the Plan or as an appendix to the Disclosure Statement.

1.40. **Federal Judgment Rate** means the rate of interest applicable from time to time pursuant to 28 U.S.C. § 1961.

1.41. **Fee Claim** means a Claim of a Professional for compensation or reimbursement of costs and expenses relating to services incurred after the respective Order for Relief Date and prior to and including the Effective Date.

1.42. **Final Decree** means the decree contemplated under Bankruptcy Rule 3022.

1.43. **Final Fee Applications** means the final requests for payment of Fee Claims.

1.44. **Final Order** means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Chapter 11 Case, the operation or effect of which has not been stayed, reversed, or amended and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending.

1.45. **Founders Agreement** shall mean those documents embodying the agreement whereby individuals purchased Founder Units from the Debtor.

1.46. **Founders Unit** shall mean the unit of investment into the Debtor via subscription agreement.

1.47. **Founders Unit Claim** shall mean any Claim based upon a Founders Agreement.

1.48. **General Unsecured Claim** means a Claim that is not an Administrative Claim, a Secured Claim, a Priority Tax Claim, a Non-Tax Priority Claim, a Founders Unit Claim, a Cage Investor Claim, or an Oysters for Life Claim.

1.49. **Governmental Unit** has the meaning set forth in Bankruptcy Code section 101(27).

1.50. **HHJ** means Harris, Hardy and Johnstone, PC

1.51. **HPP Equipment** means high-pressure processing equipment, owned by OCVA Holdings.

1.52. **HPP of Virginia** means an entity owned by OCVA Holdings that operates the HPP Equipment and provides the high-pressure processing services.

1.53. **Holder** means an Entity holding a Claim or Interest.

1.54. **Impaired** means, when used in reference to a Claim, Interest, or Class, a Claim, Interest, or Class that is impaired within the meaning of Bankruptcy Code section 1124 of the Bankruptcy Code.

1.55. **Interests and/or Equity Interests** mean the legal, equitable, contractual, and other rights of any Entity with respect to any capital stock, membership interest or other ownership interest in the Debtor, whether or not transferable, and all options, warrants, call rights, puts, awards, or rights or agreements to purchase, sell, or subscribe for an ownership interest or other equity security in the Debtor.

1.56. **Involuntary Case** means the involuntary bankruptcy case that was initiated by the Petitioning Creditors.

1.57. **IRS** means the Internal Revenue Service.

1.58. **ISNRP** shall mean the In-Situ Nutrient Remediation Program, which program the Oyster Company of Virginia developed through a series of co-ops and contracts as an oyster agricultural-based nutrient credit market exchange program.

1.59. **Lien** shall mean any lien, security interest, pledge, title retention agreement, encumbrance, charge, mortgage, or hypothecation to secure payment of a debt or performance of

an obligation, other than, in the case of securities and any other equity ownership interests, any restrictions imposed by applicable United States or foreign securities laws.

1.60. ***Living Memorial Reef Program*** shall mean as described in Article IV of the Disclosure Statement.

1.61. ***Local Rules*** means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Eastern District of Virginia as now in effect a hereafter amended.

1.62. ***Loughridge Secured Claim*** means the claim in the amount of no more than \$150,000.00 of Mr. and Mrs. Loughridge against the Debtor purportedly secured by the Debtor's real property more commonly described as the ROCVA Docks at 146 Forrest Road, Poquoson, Virginia.

1.63. ***Middlesex*** means Middlesex County, Virginia.

1.64. ***Mr. Nolley*** means W. Tolar Nolley.

1.65. ***New Equity*** means OCVA Holdings which will upon the Effective Date make the New Equity Contribution in exchange for Equity Interests in the Reorganized Debtor.

1.66. ***New Equity Contribution*** means the cash and other aspects contributed by the New Equity on or before the Effective Date in an amount sufficient to satisfy Distributions to all Allowed Claims in Class 1 through 8 to be made as of the Effective Date, which is greater than or reasonably equivalent to the value of the Equity Interests issued to the New Equity in exchange therefore.

1.67. ***Non-Tax Priority Claim*** means a Claim, other than a Priority Tax Claim, which is entitled to priority in payment pursuant to Bankruptcy Code section 507(a).

1.68. ***OCVA Holdings*** means OCVA Holdings, LLC.

1.69. ***Old Equity*** means the owners of Equity Interests prior to the Effective Date.

1.70. ***Order for Relief Date*** means November 4, 2016, the date when the Court entered its order for relief in this case.

1.71. ***Oyster Company of Virginia and/or OCVA*** shall mean the Oyster Company of Virginia, LLC.

1.72. ***Oysters For Life*** means a program whereby a supporter receives a "thank you" for participating in the program designed to provide the opportunity to help accelerate the construction and deployment of oyster cages with oyster seeds into various watershed regions throughout the Chesapeake Bay through the subscription to an "Oysters for Life" package.



1.73. **Oysters for Life Claim** means a Claim pursuant to the Oysters for Life program.

1.74. **Petition Date** means September 27, 2016.

1.75. **Petitioning Creditors** means Jeffrey D. & Eleanor V. Orndorff, Chandler S. Wiegand, and Half Shell Partners, LLC.

1.76. **Plan** means the Debtor's Plan of Reorganization dated July 5, 2017, as may thereafter be amended.

1.77. **Professional** means any professional employed in the Chapter 11 Case pursuant to sections 327, 328, or 1103 of the Bankruptcy Code

1.78. **Priority Tax Claims** means a Claim that is entitled to priority under Bankruptcy Code section 507(a)(8).

1.79. **Reeftek Sentinel** means the artificial reef designed by RW Jensen and rebranded/repositioned by OCVA.

1.80. **Released Claims** means the claims or causes of actions described in Article X., B., and C. of the Plan.

1.81. **Reorganized Debtor** means the Debtor after the Effective Date.

1.82. **ROCVA Docks** shall mean the real property more particularly described as

All that certain wharf located on Bennett's Creek in the City of Poquoson, Virginia, including all buildings, fixtures and improvements of all kinds thereon, the same being located at what is known as "Barrell Factory Landing", on said creek.

Also that certain right or grant which was made to Wilton Wilson and J.M. Hunt by the Board of Supervisors of York County, Virginia at a regular meeting of said Board held at the Courthouse of said County on the 21st day of August, 1930.

Subject to all easements, restrictions, covenants and reservations of record relating to said property.

Together with all and singular the buildings and improvements thereon, rights and privileges, the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

Together with all those rights and privileges for parking and sewer granted in that "Deed of Parking and Sewer Easement" dated October 31, 2014 from Kay Mischelle Rollins to South Garden International, LLC recorded in the Clerk's

Office of the Circuit Court of York County and City of Poquoson, Virginia at Instrument No.: 140019397.

In being the same property conveyed to South Garden International, LLC by deed from Kay Mischelle Rollins dated October 8, 2014 and recorded in the aforesaid Clerk's Office as Instrument No.: 140019398.

1.83. **Scheduled** means, with respect to any Claim, the status, priority, and amount, if any, of such Claim as set forth in the Schedules.

1.84. **Schedules** means the schedules of assets and liabilities, the list of Holders of Interests, and the statements of financial affairs filed by the respective Debtor pursuant to Bankruptcy Code section 521 and the Bankruptcy Rules, as such schedules have been or may be further modified, amended or supplemented in accordance with Bankruptcy Rule 1009 or orders of the Bankruptcy Court.

1.85. **Secured Claim** means a Claim that is secured by Collateral owned by the respective Debtor, subject to Section 506(a) of the Bankruptcy Code.

1.86. **Tax Claim** means all or that portion of a Claim held by a Governmental Unit for a tax assessed or assessable against the Debtor, including income and employment taxes and any related penalties or interest.

1.87. **Taxes** means any and all taxes, levies, imposts, assessments, or other charges of whatever nature imposed at any time by a Governmental Unit or by any political subdivision or taxing authority thereof or therein and all interest, penalties, or similar liabilities with respect thereto.

1.88. **Tavanner & Beran** means Tavanner & Beran, PLC, counsel to the Oyster Company of Virginia.

1.89. **TMDL** means Total Maximum Daily Load

1.90. **UCC** means the Official Committee of Unsecured Creditors appointed in this Chapter 11 Case.

1.91. **Unclassified Claims** means Fee Claims and Administrative Claims.

1.92. **Unimpaired** means, when used in reference to a Claim, Interest or Class, a Claim, Interest or Class that is not impaired within the meaning of Bankruptcy Code section 1124.

1.93. **Unsecured Claims** means a Claim other than a Secured Claim, Priority Tax Claim, NonPriority Tax Claim, Fee Claim and/or Administrative Claim.

1.94. **U.S. Trustee** means the Office of the United States Trustee for the Eastern

District of Virginia.

1.95. *Warrant Subscription* means the instrument executed by OCVA pursuant to which warrant founder units were offered.

## II. INTRODUCTION

### A. General Information

The Oyster Company of Virginia submits this Disclosure Statement pursuant to § 1125 of the Bankruptcy Code and in connection with seeking Confirmation of its Plan, a copy of which is attached as Exhibit A. Unless otherwise defined herein, terms used in this Disclosure Statement have the meaning assigned in the Plan for the Debtor.

The Oyster Company of Virginia provides this Disclosure Statement to enable any creditor whose Claim is Impaired, if any, under the Plan and, therefore, entitled to vote on the Plan, to arrive at a reasonably informed decision in exercising the right to vote to accept or reject the Plan. This Disclosure Statement should be read in its entirety prior to voting on the Plan. The information contained herein is based on records maintained by the Oyster Company of Virginia, and no representation or warranty is made as to their complete accuracy.

For the Plan to be confirmed, Classes must either accept or be Unimpaired. To the extent a Class is Impaired, creditors in each class of Impaired Claims who hold at least two-thirds in amount and more than one-half in number of Claims within the Class must vote in favor of the Plan. If a party does not vote, i.e. does not return a fully completed Ballot within the specific time to the correct addressee, neither the party nor the amount of its Claim or Interest is counted to determine acceptance or rejection of the Plan. If you are entitled to vote and do not, the Ballots will be tallied as though your Claims did not exist. The Court can confirm the Plan even if the requisite acceptances are not obtained so long as the Plan complies with the Bankruptcy Code and accords fair and equitable treatment to any non-accepting Class. Even if the requisite acceptances are not obtained, the Oyster Company of Virginia intends to seek confirmation of the Plan because it believes the Plan complies with the Bankruptcy Code and accords fair and equitable treatment to any non-accepting Class.

Parties entitled to vote are furnished a Ballot on which to record their respective acceptances or rejections of the Plan. Those completed Ballots must be returned to Tavenner & Beran, who will tally the votes and report the results to the Court at the Confirmation Hearing.

### B. Information Regarding Disclosure Statement

**NO REPRESENTATIONS CONCERNING THE OYSTER COMPANY OF VIRGINIA, THE OYSTER COMPANY OF VIRGINIA'S PROPERTY, THE VALUE OF**

**THE OYSTER COMPANY OF VIRGINIA'S PROPERTY, OR THE PLAN ARE AUTHORIZED UNLESS THEY ARE IN THIS DISCLOSURE STATEMENT. THIS DISCLOSURE STATEMENT IS THE ONLY STATEMENT WITH RESPECT TO THE PLAN. NO OTHER REPRESENTATION CONCERNING THE OYSTER COMPANY OF VIRGINIA OR THE VALUE OF ITS PROPERTY HAS BEEN AUTHORIZED. YOU SHOULD RELY ONLY ON THE REPRESENTATIONS OR INDUCEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT. YOU SHOULD REPORT ANY ADDITIONAL REPRESENTATIONS AND INDUCEMENTS TO THE COURT, COUNSEL FOR THE OYSTER COMPANY OF VIRGINIA, OR OFFICE OF THE UNITED STATES TRUSTEE.**

**THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A RECOMMENDATION BY THE COURT AS TO THE MERITS OF THE PLAN BUT MERELY CONFIRMS THAT THE DISCLOSURE STATEMENT IS ADEQUATE TO PROVIDE THE INFORMATION NECESSARY FOR YOU TO MAKE AN INFORMED JUDGMENT REGARDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.**

**THIS DISCLOSURE STATEMENT PROVIDES INFORMATION ABOUT THE PLAN. ALTHOUGH THE OYSTER COMPANY OF VIRGINIA BELIEVES THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS ACCURATE, THE PROVISIONS OF THE PLAN CONTROL IF THERE IS ANY INCONSISTENCY BETWEEN THE PLAN AND THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT.**

The Oyster Company of Virginia does not warrant that the financial data in this Disclosure Statement is error free, but the Oyster Company of Virginia and its professionals have been careful to see that all financial information is fairly and accurately presented. To the best of its knowledge and belief, the Oyster Company of Virginia believes the financial information in this Disclosure Statement is accurate.

If the Court does not confirm the Plan, the Oyster Company of Virginia may amend its Plan or file a different Plan. If the Court does not confirm the Plan and the exclusive period within which the Oyster Company of Virginia can obtain acceptance expires, a creditor may file a plan of reorganization. Additionally, on motion of a party in interest and after notice and a hearing, the Court may convert the Bankruptcy Case to a Chapter 7 case. The Oyster Company of Virginia also have the absolute right to convert its Case to a Case under Chapter 7 pursuant to Bankruptcy Code § 1112(a).

### **III. GENERAL INFORMATION ABOUT THE OYSTER COMPANY OF VIRGINIA**

The Oyster Company of Virginia, LLC, is a Virginia limited liability company, created by its sole managing member, W. Tolar Nolley, Jr. in 2010. OCVA was created to provide a sustainable model using the private sector markets in conjunction with non-profits and

public/private partnerships. Since its inception, OCVA and Mr. Nolley have worked tirelessly to foster and promote the interests of OCVA for the benefit of its creditors, the watermen, the Chesapeake Bay and the aquaculture industry. Unfortunately, OCVA experienced certain administrative and operational issues that created liquidity problems. Prior to finalizing certain administrative, financial, and operational issues, the Oyster Company of Virginia had the Involuntary Case brought against it by Petitioning Creditors.

The Oyster Company of Virginia has continued in possession of its properties as a debtor-in-possession, pursuant to § 1107 of the Bankruptcy Code. From the very beginning of this Bankruptcy Case, the Oyster Company of Virginia has pursued a path towards a successful reorganization.

## **SIGNIFICANT PREPETITION ACTIVITIES AND EVENTS**

The Oyster Company of Virginia is a unique company whose mission includes promoting the sustainable return of the native 'Virginia Oyster' ("Crassostrea virginica") as the basis for the health of the Chesapeake Bay and its ecosystem by accelerating programs and projects with proven results and enlisting our Virginia Watermen as an important part of the solution. OCVA has developed specific programs and projects using modeled and measured science from scientists and other individuals from highly regarded institutions as the basis for creating value added solutions for restoring the Chesapeake Bay's oyster population while balancing the commodities (fisheries) with restoration (habitat). Key parts of OCVA's operations include:

### **“In Situ” Nutrient Remediation Program**

As a compliment to the EPA's TMDL policy and protocol overseen by the CBP as part of the Chesapeake Bay Act and Chesapeake Bay Blue Print, OCVA developed a public private partnership model to provide real nutrient reduction values in the Bay while creating sustainable jobs and accelerating oysters and other fish and reef habitat. The ISNRP model is based on a relatively straightforward approach to reducing the nutrient loadings (total nitrogen and total phosphorous) in the Chesapeake Bay stem and main tributaries. ISNRP oysters are grown, managed, tracked, and harvested distinctly from other oysters grown and harvested in the oyster aquaculture industry and operations of OCVA and its cooperative-based network of watermen. A technology-based system of counting and measuring ISNRP oysters and reporting their size and numbers to state agencies ensures accuracy of harvest counts and nutrient credits generated and certified for trading.

Based on published studies, the CBP's own Scientific and Technical Advisory Committee (“STAC”) determined that oysters remove and retain certain amounts of nitrogen and phosphorous within the oyster meat and shell when harvested at certain sizes.<sup>2</sup> The STAC report

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<sup>2</sup> Chesapeake Bay Program Scientific and Technical Advisory Committee, “Evaluation of the Use of Shellfish as a Method of Nutrient Reduction in the Chesapeake Bay,” Publication No. 13-005 (2013), *available at* [http://www.chesapeake.org/pubs/307\\_Luckenbach2013.pdf](http://www.chesapeake.org/pubs/307_Luckenbach2013.pdf). *See also*, R. Newell and R. Mann, “Shellfish Aquaculture: Ecosystem Effects, Benthic-Pelagic Coupling and Potential for Nutrient Trading, A Report Prepared

on this topic therefore offers a sound scientific basis in its own right for calculating the level of nutrient reduction associated with certain sizes of oysters harvested in an aquaculture context. In this respect, calculating the nutrients removed from the water column is easily understood. In addition, the ISNRP operational model makes financial sense in the context of sale of nutrient credits to help cover the cost of the additional controls and verification systems being employed, so the ISNRP activity and nutrient reduction effects are truly independent of and additional to the regular aquaculture industry activity and allow for reasonable certainty in the water quality benefits gained from the ISNRP itself.

It is important to note that the ISNRP is very different from typical best management practices used for non-point source nutrient control where actual quantifiable and verifiable measurement of actual nutrient reduction is very difficult, if possible at all. The ISNRP produces quantifiable, measurable, consistent, verifiable and reliable nutrient reduction, because we know through the STAC-reviewed and approved science how much total nitrogen and total phosphorous is assimilated in the body and shell of the oysters to be used in and harvested through the ISNRP. The science is well-settled, and the math is simple: sort and count the oysters harvested by size category and apply the appropriate TN or TP content factor to determine the pounds of TN and TP removed from the water column.

Any potential for nitrification of the water column from ISNRP aquaculture activity is expected to be statistically insignificant compared to its nitrogen reduction effects. At worst, it would be consistent with (and likely lower than) development of an oyster reef sanctuary – which are championed as excellent for water quality – especially when one considers that nutrients are not actually harvested from the water column at such reefs as they are with the ISNRP. Also, if and to the degree ISNRP shell were returned to the water for oyster reef development and colonization, such shell creates a nutrient reduction multiplier effect through the many new oysters that set on these shells that is on a scale well above any potential for slow nutrient reintroduction to the water column from returned ISNRP shells. Any concerns about nitrification associated with the ISNRP that would undercut its nutrient reduction effects are therefore misplaced.

An additional feature of the ISNRP is its scalability, in that the basic operational model can be replicated and expanded based on demand for credits. This allows OCVA to avoid over-commitment of resources in the first instance and to ramp up ISNRP activity as needed to meet actual nutrient credit customer needs. This helps in turn reduce operational and financial uncertainty, as well minimize uncertainty in nutrient credits that are not used or committed to a

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for Virginia Secretary of Natural Resources,” 13 (June 21, 2012); STAC Factsheet: Oyster Nutrient Reduction Potential (May 2014), available at [http://www.chesapeake.org/pubs/321\\_Luckenbach2014.pdf](http://www.chesapeake.org/pubs/321_Luckenbach2014.pdf); C. Higgins., K. Stephenson, and B. Brown, “Nutrient Bioassimilation Capacity of Aquacultured Oysters: Quantification of an Ecosystem Service,” *J. Environ. Qual.* 40:271–277 (2011), available at <https://www.vcu.edu/cesweb/faculty%20profiles/Brown/Higgins%20et%20al%20'11%20JEQ.pdf>. The last experiment used to verify these rates of reduction based on size class of the oysters was performed in floating cages located near the mouth of the Potomac River that were essentially identical to those being used for the ISNRP.

permittee. Consequently, the business model is very efficient, timely generating credits with little waste.

Also, the economic impact of the ISNRP to many watermen, the seafood industry and its industry partners, facilities and property owners needing alternative sources of nutrient credits, and the general public should be significant. OCVA will be contracting through watermen teams to carry out the day-to-day work of the ISNRP. This will put back to work many watermen sidelined thus far even in a growing general oyster aquaculture industry. It is expected to be the tipping point for many who have held back with uncertainty and will help motivate new, younger watermen to enter this industry for the first time. This increased activity will in turn require greater transportation, equipment, packaging and boat repair services, just to name a few benefits. For those waterfront communities along the Bay and its tributaries, the ISNRP will therefore be a welcomed addition to their economic recovery efforts and provide measured, demonstrable improvement to water quality in the Bay.

The ISNRP has been certified (March, 2015) by the Department of Environmental Quality (“DEQ”) under Virginia’s nutrient credit trading statute (Va. Code § 62.1-44.19:20.C) for the generation of term (annual) nutrient credits that could be traded for use by parties needing to offset nutrient loadings into the Bay and its tributary systems. In turn, such credits are themselves certified by DEQ each year based on reports to DEQ of the number and sizes of oysters harvested that year and using a straightforward, scientifically-based formula for nitrogen and phosphorous content in the meat and shell of the harvested oysters. Having been certified by DEQ and pursuant to Va. Code §§ 62.1-44-19:15.B.1b, 62.1-44.19:20.C, and 62.1-44.21.A, C and D, the credits may be marketed and sold to a variety of facilities or operations needing to offset their respective nutrient loadings in their wastewater or storm water discharges. A copy of the DEQ authorization is attached hereto as Exhibit 1.

Finally, various permitted facilities and projects requiring offsets to nutrient loadings in their wastewater or storm water discharges will be able to purchase credits from a source that is having manifold additional economic benefits for the communities in which the ISNRP is operating and where that facility or project may be located. Additional options for nutrient credits can only help contain costs for such facilities and projects and will offer a means to schedule out the expenses of such credits over time in a more cost-effective manner. In the end, the public interest is served by a complementary means to improve water quality in the Bay and its tributaries, which has multiple other beneficial effects for recreation, fishing, and other uses of these waters.

Due to inquiries by certain NGO’s and entities post approval by DEQ, ISNRP’s marketability was delayed and under EPA’s CBP reactionary “policy and procedures” needed to be approved as a BMP for credit towards the TMDL and NPDES permits. This caused substantial financial delays to OCVA. Support from Congressmen and both US Senators, Virginia’s Secretary of Agriculture and others helped to accelerate the CBP process while working with senior leadership as to other options for authorizing ISNRP.

## **Oysters For Life**

As a solution to a recognized need for accelerating the oyster aquaculture industry for watermen that wanted to participate but did not have the financial means to grow to the necessary levels for sustaining this transition and emerging technology, and as part of the ISNRP, the Debtor developed the Oysters for Life Program, which was designed to provide the opportunity to help accelerate the construction and deployment of oyster cages with oyster seeds into various watershed regions throughout the Chesapeake Bay. The program also provides sustainable jobs for watermen and their families while helping them transition from “hunter gatherer” to “aquaculture farmers.”

These oyster cage packages are then sold through the “Oysters for Life” campaign and may also be assigned to participants needing nutrient offset credits. The campaign is based on the cost of building the oyster cage, with original deployment of 2000 oyster seeds by watermen in leased, subleased and or OCVA private leased bottoms throughout various watersheds in the Chesapeake Bay.

These cages are uniquely numbered for identification purposes that are assigned to each supporter through the “Oysters for Life” program. ( In addition, these cage numbers can be assigned to each ISNRP contract.) When a supporter purchases either an “Oysters for Life” package or an ISNRP contract, those cage numbers are processed and credited to the OCVA Cage Investment Program creditor with a return of principle and interest, in sequence, accordingly. As a “thank-you” supporters were scheduled to receive two dozen fresh Virginia oysters once a year for 10 years, or for life, and OCVA continues to provide such thanks (though no longer in life time increments). Participants also have access at co-op prices to additional oysters throughout the year.

At the discretion of OCVA, the Cage Investment program allowed for more cages to be built with the next available sequence of cage numbers. The original goal was to construct between 10,800 – 20,000 cages by the end of 2016 and repeat this process to meet market demands and help restore the health of the Chesapeake Bay with the oyster, the watermen, and our OCVA supporters. Over 1,230 Oysters For Life supporters are located in 44 States throughout the USA.

## **Reeftek Sentinel**

In 2010, OCVA was approached by retired Naval engineer Robert W. Jensen to see his Reeftek designed artificial reef that has unique features and has been deployed/studied in the Rappahannock River since 1994. Known as a Harvestable Oyster Reef Module, this Virginia engineered product needed to be repositioned properly – not for harvesting to pay for the manufacturing/deployment, but as a viable accelerator for fish and reef habitat (using natural and prestruck oyster larvae) for oyster sanctuary recruitment and protection and for wave attenuation helping to mitigate erosion and as a stabilizer for living shoreline restoration.



Through an agreement with Reeftek/R.W. Jensen, OCVA acquired the rights to the Reeftek “Sentinel” (as now referred to) for reef projects and also launched a the “Living Reef” program for public participation. Its 7.5-ton, five-layered concrete artificial reef modules are long-term growth structures for oysters and a habitat for marine life. The agreement has allowed OCVA to reposition and build real value for this Virginia engineered product. Through its network, OCVA has now developed, reengineered, and tested the current mold for successful sanctuary restoration, acceleration of fish and reef habitat, and wave attenuation.

As delineated through the synopsis of the various components of its operations, OCVA is not an ordinary oyster company. The breadth of its diverse areas of focus is further delineated in detail on the World Wide Web at [www.ofltest.com](http://www.ofltest.com) to be transferred to the old [www.oystersforlife.com](http://www.oystersforlife.com) and [www.letsfixourbay.org](http://www.letsfixourbay.org).

#### **IV. MATERIAL POST-PETITION PROCEEDINGS AND EVENTS**

While the technical operations have been moving forward at rapid speed since the inception, maneuvering through the governmental mine fields to finalize all necessary state and federal approvals took longer than some interested parties had planned. On September 27, 2016 Jeffrey D. & Eleanor V. Orndorff, Chandler S. Wiegand, and Half Shell Partners, LLC, by certifying under penalty of perjury that each held claims against the Debtor, instituted the Involuntary Case against the Debtor under Chapter 7 of Bankruptcy Code, seeking to have the company liquidated. Thereafter, on October 20, 2016, the Debtor filed the Response, Consent to Entry of Order for Relief and Motion to Convert Case to Chapter 11 Pursuant to 11 U.S.C. § 706. Such response was solely for the purpose of consenting to the order for relief and the Debtor has reserved all rights to object to any claims filed by any or all Petitioning Creditors in this case and further has reserved its rights to pursue any and all claims and/or Causes of Action that it might hold against any or all of the Petitioning Creditors. Subsequently, the Bankruptcy Court entered an Order for Relief on November 4, 2016, and thereafter an Order Converting Case from Chapter 7 to Chapter 11.

On December 23, 2016, the Office of the U.S. Trustee appointed the UCC. The Debtor’s principal has kept the chair of the UCC apprised of all significant events in this Case. Furthermore, certain members of the UCC have been actively involved in this Case.

Because it began as an Involuntary Case, the Debtor’s counsel had no prior dealings with the Debtor, and had neither educated nor assisted the Debtor in the nuances and requirements of a Chapter 11 reorganization. Upon the entry of the Order for Relief, the Debtor diligently endeavored to gather the information necessary to complete its required filings including its Schedules. In addition, the Debtor spent a substantial amount of time with its counsel learning about the Chapter 11 process and the requirements of the same.

The Debtor filed its Schedules, and no party suggested any significant deficiency<sup>3</sup> in the same. The Debtor attended its 341 Meeting of Creditors, provided documents requested by the U.S. Trustee and answered all questions posed by the U.S. Trustee, as well as most questions posed by the UCC and others. The section 341 Meeting of Creditors was exceedingly long and drawn out, and the questioning was extremely specific and pointed unlike ordinary meetings in this District for cases of similar size and complexity.

Admittedly, as the time of the date of the entry of the Order for Relief, the Debtor was not current with its obligations associated with tax reporting and remittances. The Debtor immediately disclosed the same to the U.S. Trustee, and provided a proposal to correct the same. The Debtor also disclosed this issue to this Court. The Debtor is diligently working with its accountant to correct the same.

Since the appointment of the UCC, the Debtor has spent a significant amount of time working with the UCC and various members to establish a confidential flow of information between the UCC and the Debtor whereby the Debtor can provide confidential information to the UCC so that it can better understand the Debtor's business and its significant prospects for a successful reorganization. It did first require the negotiation of appropriate confidentiality agreements given its concerns regarding the proprietary information related to its operations and its further concerns regarding the utilization of the same from certain UCC members. Ultimately, those issues were appropriately addressed through documentation. On February 22, 2017 the UCC filed a Stipulated Protective Order with the advice and consent of the Debtor. ECF No. 74 In addition, certain members of the UCC (who also were Petitioning Creditors) resigned from the UCC. The Debtor has welcomed the UCC's continued input into the Debtor's business and ultimate reorganization.

A portion of the Debtor's time during this reorganization unfortunately was distracted when the Debtor was forced to address several Motions for Authority to Examine the Various Entities Pursuant to Federal Rule of Bankruptcy Procedure 2004 brought by one of the Petitioning Creditors who instigated this Involuntary Case. As noted in the Debtor's Objection and Reservation of Rights to Half Shell Partners LLC's 2004 Motion, the Debtor was concerned that the entity was attempting to liquidate the Debtor and potentially walk away with the Debtor's business. After all, the Involuntary Case was filed as a Chapter 7 liquidation. The Court denied, without prejudice, the Rule 2004 motion.

The Debtor has continued its efforts to further the Reeftek Sentinel project. In December of 2016, OCVA was granted authorization for deploying the Reeftek Sentinel in various artificial reef sites throughout the Virginia Chesapeake Bay jurisdiction. A copy of said agreement is attached hereto as Exhibit 2. The Reeftek "Sentinel" is currently specified for the "Saxis" town project through a collaborative effort with state, federal and local support as well as through a public private partnership; and the highly publicized "Tangier Island" project which was presented at the Paris Climate Change Conference by David Schulte, USACE and advisor to the

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<sup>3</sup> The Debtor did note on the record that it intended to file amendments to the Schedules.

Debtor, where the island has experienced erosion at the current rate of loss of sixteen feet per year. OCVA also is an integral part of the Living Memorial Reef Program, launched, and developed in partnership with the Virginia Ecological Solutions Foundation, an IRS Section 501(c) (3) qualified entity, as an alternative to traditional burials; a living memorial reef; and for public private partnership for specific projects where a potential for tax benefits may inure to the participants (though this document is not providing tax advice).

In addition, the Debtor has continued its efforts to finalize the various technical permitting items that inevitably would take its operations to the next level. OCVA Holdings, which is not a Debtor, has invested for the benefit of all creditors of the Debtor, funds at its own risk, to accelerate the approval of ISNRP beyond the bounds of Virginia and has made tremendous strides with the new administration of the federal government. Significant discussions with the EPA, Congressional offices and the Executive office have led to a high degree of confidence regarding a pending approval/signing of the ISNRP by the EPA for federal authorization of the already Commonwealth of Virginia approved program. Once fully recognized, approved and authorized by the EPA, the ISNRP may also be used by other states within the Chesapeake Bay watershed as well as other states where applicable as part of their NPDES permit requirements for nutrient remediation/reduction/credit. The revenues produced through ISNRP are derived from a variety of area requirements outlined in the NPDES permits and for contracts needed to mitigate, and the actual commodity of the oysters produced, including its shell. A sample of current federal support is found at Exhibit 3 attached hereto.

The Debtor has sought and obtained an extension pursuant to § 1121(d) of the Bankruptcy Code, extending the exclusive period during which the Debtor may file a plan to July 5, 2017. The Bankruptcy Court has entered a bridge order extending the exclusive plan period. The Debtor has actively sought input from various members and shared with the UCC the general terms of its Plan attached hereto.

**V. THE ASSETS OF THE OYSTER COMPANY OF VIRGINIA**

**A. The Real Property**

The Oyster Company of Virginia has the following Real Property:

Real Property	Scheduled Value	Debtors' Estimated Value Range As of July 5, 2017
ROCVA Dock 146 Forrest Drive Poquoson, VA 23662	\$554,000.00	\$554,000.00
460 Morris Flippin Road, Mathews, VA 23109	\$76,875.00	\$76,875.00

**B. The Personal Property (Physical Assets) of the Oyster Company of Virginia**

The Oyster Company of Virginia has the following Personal Property:

Personal Property	Scheduled Value	Debtors' Estimated Value Range As of July 1, 2017
Cash on Hand	\$300	00.00
Business Checking account at Chesapeake Bank ending in 6030	\$921.00	Account Closed
Wells Fargo Bank, N.A. Simple Business Checking account ending in 1200	N/A	\$1022.33
PayPay Account	\$73.56	\$17.11
Rent Deposit with Eastern Shore Marketing Co-Op, LLC	\$2,000.00	\$2,000.00
Accounts Receivable	Unknown	Unknown
100% ownership of CaCo, LLC	Unknown	Unknown
100% ownership of Nutrient Credit Group of Virginia, LLC	Unknown	Unknown
100% ownership of Nutrient Credit Group of Maryland, LLC	Unknown	Unknown
Packing and promotional supplies, oyster knives, Styrofoam coolers, zipper cooler, shot glasses, pilsner glasses, hats, towels	Unknown	Unknown
Approximately 16,000,000 oyster seeds, juvenile oysters, and/or market sized oysters	Unknown	Unknown
Cages, Upwellers, Downwellers, Buoys, Orange Markers, and other miscellaneous equipment (Does not include value of like kind exchange)	Unknown	Unknown
Assorted office equipment (desks, chairs, tables, file cabinets, and other seating)	Unknown	Unknown
Leasehold improvements	Unknown	Unknown
2 desktop computers with monitors, 1 laptop, 1 iPad	\$2,000.00	\$2,000.00
45' Buoy Tender (known as the Pyxis)	\$100,000.00	\$100,000.00
36' Deadrise (known as Grand Bankie)	Unknown	Unknown
28' Sun Tracker Pontoon Boat (currently untitled and being re-conditioned)	Unknown	Unknown
2006 Cub Cadet Big Country	\$5,000.00	\$5,000.00
Trademark on "Oysters for Life"	Unknown	Unknown
<a href="http://www.oystersforlife.com/">http://www.oystersforlife.com/</a>	Unknown	Unknown
<a href="http://www.oysterva.com">http://www.oysterva.com</a>	Unknown	Unknown

<a href="http://www.oysters4life.com">http://www.oysters4life.com</a>	Unknown	Unknown
Commonwealth of Virginia, Department of Environmental Quality In Situ Nutrient Remediation Program	Unknown	Unknown
Commonwealth of Virginia Marine Resources Commission Oyster Ground Leases numbers 19078, 20675, 19258	Unknown	Unknown
Oysters for Life Customer List	Unknown	Unknown
Goodwill: Promoting the sustainable return of our native 'Virginia Oyster' ("Crassostrea virginica") as the basis for the health of the Chesapeake Bay and its ecosystem by accelerating programs and projects with proven results and enlisting our Virginia Watermen as an important part of the solution.	Unknown	Unknown
Note receivable from CaCo, LLC	\$70,000.00	\$70,000.00
Note receivable from James Stover	\$9,200.00	\$9,200.00
Net Operating Losses originating as early as 2010	Unknown	Unknown
Mold used in the ReefTek Sentinel operation (Chesapeake Pipe and Precast)	\$5,000.00	\$5,000.00
Living Memorial Oyster Program	Unknown	Unknown
ReefTek Sentinel Program	Unknown	Unknown
Buck-A-Shuck Program	Unknown	Unknown

**C. Avoidance Actions and Other Causes of Action**

The transactions listed on Exhibit 4 attached to the Disclosure Statement may constitute Avoidance Actions. Given that the success of the Plan depends on the continued, successful operations of the existing business, the Debtor does not believe it prudent to potentially harm said operations by pursuing the Avoidance Actions; therefore, the Plan contemplates that, under Section 547 of the Bankruptcy Code, Avoidance Actions shall be waived on the Effective Date. The only other litigation identified to date is a potential Cause of Action against one or more Petitioning Creditors for potential improper, bad faith filing of the Involuntary Case, which is being expressly preserved in the Plan.

**VI. THE OYSTER COMPANY OF VIRGINIA’S LIABILITIES**

**A. Administrative Expenses**

**1. Professional Fees and Expenses.**

Professional fees and expenses incurred by the Oyster Company of Virginia, after approval by the Bankruptcy Court, are administrative expenses. While Entities have not filed fee applications as of yet, the asserted and/or projected amount of unpaid Fee Claims as of the Effective Date is expected to be as indicated on Exhibit 8.

**2. Administrative Tax Claims.**

Taxes accruing after the Petition Date are Administrative Tax Claims. The Oyster Company of Virginia is not aware of any past-due taxes in the form of Administrative Claims.

**3. Post-Petition Expenses Incurred In The Ordinary Course.**

As indicated on the various monthly operating reports filed with the Bankruptcy Court, the Oyster Company of Virginia has been paying, in the ordinary course of business, post-petition expenses incurred in the operations of the businesses. Thus, the Oyster Company of Virginia is aware of no outstanding, past due Administrative Claim for amounts incurred in the ordinary course of business.

**B. Secured Claims**

The amount of Secured Claims asserted against the Oyster Company of Virginia are as follows:

Proof of Claim or as Scheduled	Name	Amount
10	City of Poquoson	\$2,565.00
4	Middlesex County	\$43.43
Scheduled	Robert B. Fauntleroy	\$86,600.00
2	Garry Massie	\$275.00
14	Loughridge Secured Claim	\$621,875
15	HalfShell Partners LLC	\$262,350.94

The objection deadline has not yet occurred and the Debtor reserves all rights related thereto. At this point in time, the Debtor disputes the secured nature of the Claims of Garry Massie, HalfShell Partners LLC, and Loughridge. The Debtor also disputes the amount of the asserted Loughridge Secured Claim and maintains that the same is at most \$150,000.00, if any. The Debtor has determined that the scheduled claim of Robert B. Fauntleroy was in error and will be appropriately removed such that there will be no treatment as a Secured Claim.

**C. Priority Tax Claims**

Priority Tax Claims are those Claims for taxes entitled to priority in payment under § 507(a)(8) of the Bankruptcy Code. The following is a chart of the asserted Priority Tax Claims:

10	City of Poquoson	\$2,565.00
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The objection deadline has not yet occurred and the Debtor reserves all rights related thereto. The Claim of the City of Poquoson in this category is the same as asserted as a Secured Claim. The Debtor is aware of no other Priority Tax Claims at this time.

**D. Non-Tax Priority Claims**

The following are the known asserted Non-Tax Priority Claims:

Proof of Claim	Name	Amount
5	Bush, Art	\$105.00
2	Garry Massie	\$275.00

The objection deadline has not yet occurred and the Debtor reserves all rights related thereto. The Debtor disputes the classification of said Claims.

**E. Unsecured Claims**

The following are the known Unsecured Claims for the Oyster Company of Virginia:

***Founder Unit Claims***

Proof of Claim	Name	Amount
14*	William E. & Patricia Loughridge	\$621,875.00
15*	Half Shell Partners, LLC	\$262,350.94
	G. Allen Ramer, Jr.	\$100,000.00
12	Chandler Scott Wiegand	\$67,645.75
	William M. Benton	\$50,000.00
	Jeffrey D. & Eleanor Orndorff	\$50,000.00
	Susan E. Ranels	\$50,000.00
	JLL Venture, LLC	\$185,000.00

The objection deadline has not yet occurred and the Debtor reserves all rights related thereto. Claims marked with an \* were also filed as Secured Claims. The Debtor disputes the asserted amount of certain of Claims listed above. Attached as Exhibit 5 is a sheet outlining what the

Debtor, at this point in time, believes is due and owing. The Debtor reserves all rights to further modify its calculations and to object to any and all Claims on any and all basis.

***Cage Investor Claims***

Proof of Claim	Name	Amount
8	John B. Thompson	\$21,384.00
9	John R. Thompson	\$59,400.00
	Bruce D. Belt	\$50,000.00
	Mark A. & Melissa Christian	\$370,000.00
3	Colvin Ryan	\$204,980.00

The objection deadline has not yet occurred and the Debtor reserves all rights related thereto. The Debtor disputes the asserted amount of certain of Claims listed above. Attached as Exhibit 5 is a sheet outlining what the Debtor, at this point in time, believes is due and owing. The Debtor reserves all rights to further modify its calculations and to object to any and all Claims on any and all basis.

***Oysters for Life Claims***

The Oysters for Life Claims may be found at Schedule G filed with the Bankruptcy Court. To the extent any party has a question about said claims, he/she/it may obtain a copy of Schedule G by contacting Debtor’s counsel at [dtabakin@tb-lawfirm.com](mailto:dtabakin@tb-lawfirm.com).

***General Unsecured Claims***

The following are asserted, and not otherwise waived, General Unsecured Claims:

Proof of Claim	Name	Amount
1	Williams Mullen	\$78,851.73
6	Leinster Nutrient Exchange, LLC	\$17,087.50
7	Evans, Jimmi	\$175.00
11	AIA Services, LLC	\$6,098.86
13	Matthew D. Jenkins	\$11,340.00
	Arrowhead Lawncare	\$250.00
3	Colvin Ryan	\$204,980.00
	Images in Art	\$71.00
	Robert B. Fauntleroy	\$86,600.00
	Long Point LLC	\$400.00
	Martin Browder	\$87,500.00



	Noblett, Inc.	\$418.00
	Oryx Designs	\$6,199.00
	C. Craig Palmore	\$7,500.00
	South Garden, LLC	\$301,500.00
	Ward Oyster Company	\$170.00
	Waterworks of Newport News	\$90.00
	York Box & Barrell Mfg.	\$5,801.00

The objection deadline has not yet occurred and the Debtor reserves all rights related thereto. The Debtor disputes the asserted amount of certain of Claims listed above. The Debtor has determined that the scheduled claim of Robert B. Fauntleroy as a Secured Claim was in error and has listed the same above as a General Unsecured Claim.

## **VII. DESCRIPTION OF THE PLAN**

### **A. Treatment of Claims**

The principal provisions of the Plan are summarized below. The Plan provides for certain Unclassified Claims and collectively 9 Classes of Claims and/or Interests

#### **1. Unclassified Claims**

##### **a) Administrative Expense Claims.**

Except to the extent that a Holder of an Allowed Administrative Expense Claim agrees to a different treatment, the Oyster Company of Virginia shall pay to each Holder of an Allowed Administrative Expense Claim Cash in an amount equal to such Claim on the later of the Effective Date and the first (1st) Business Day after the date that is thirty (30) calendar days after the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or as soon thereafter as is reasonably practicable.

##### **b) Fee Claims.**

Persons seeking an award by the Bankruptcy Court of Fee Claims incurred through and including the Effective Date shall, unless otherwise ordered by the Bankruptcy Court: (i) file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by the date that is no later than thirty (30) days after the Effective Date; and (ii) except as otherwise provided in the Plan, be paid in full in such amounts as are approved by the Bankruptcy Court upon the later of (a) the date upon which the Order relating to any such Fee Claim is entered or (b) upon such other terms as may be mutually agreed upon between the Holder of such Fee Claim and the Oyster Company of Virginia.

c) Administrative Tax Claims.

Except to the extent that a Holder of an Administrative Tax Claim agrees to a different treatment, Allowed Administrative Tax Claims shall be paid on the later of the Effective Date or the date such Allowed Administrative Tax Claim becomes due and owing.

d) Administrative Expenses Incurred After The Effective Date.

Administrative Expenses incurred by the Oyster Company of Virginia or the Reorganized Debtor after the Effective Date, including (without limitation) Fee Claims, shall not be subject to application and may be paid in the ordinary course of business without further Bankruptcy Court approval.

**2. Classified Claims**

The Plan provides for the following Classified Claims:

Class Number	Description	Impairment
Class 1	Priority Tax Claims	Class 1 is Impaired under the Plan
Class 2	Loughridge Secured Claim	Class 2 is Unimpaired under the Plan
Class 3	Other Secured Claims	Class 3 is Unimpaired under the Plan
Class 4	Non-Tax Priority Claims	Class 4 is Unimpaired under the Plan
Class 5	Oysters for Life Claims	Class 5 is Unimpaired under the Plan
Class 6	Cage Investor Claims	Class 6 is Impaired under the Plan
Class 7	Founders Unit Claims	Class 7 is Impaired under the Plan
Class 8	General Unsecured Claims	Class 8 is Impaired under the Plan
Class 9	Equity Interests	Class 9 is Impaired under the Plan

Class 1 consists of Priority Tax Claims, which Allowed Claims shall be paid in full in the amount of Allowed Priority Tax Claims in not less than yearly payments within five (5) years from the Order for Relief Date and in a manner not less favorable than payments to Holders in Class 8.

Class 2 consists of the Allowed Loughridge Secured Claim, which Allowed Claim, if any, will be paid in full on the Effective Date through the purchase of the Allowed Claim by OCVA Holdings.

Class 3 consists of the outstanding balance, as of the Confirmation Date, of all other Allowed Secured Claims. To the extent there are Allowed Secured Claims, the same will be satisfied by (a) payment in full on the Effective Date, (b) surrender of the respective Collateral, and/or (c) as agreed to by the parties.

Class 4 consists of Non-Tax Priority Claims. Allowed Non-Tax Priority Claims shall be paid in full on the Effective Date in the amount of Allowed Non-Tax Priority Claims.

Class 5 consists of Oysters For Life Claims. Allowed Oysters For Life Claims shall be paid in full in the amount of Allowed Oysters For Life Claims in accordance with the terms of the original instrument. As further provided in accordance with Article VII of the Plan, the Debtor intends to assume the underlying agreements related to such Class 5 Claims.

Class 6 consists of Cage Investor Claims. Allowed Cage Investor Claims existing as of the Order for Relief Date will be brought current as of the Effective Date. Further, Cage Investors on Allowed Claims shall continue to receive their return of principal and flat interest rate as new Oysters for Life members subscribe by sequential cage number, pursuant to the original Cage Investor Contract, all of which the Debtor intends to assume in accordance with Article VII of the Plan. The Reorganized Debtor may, in the exercise of its business judgment, pay an Allowed Cage Investor Claim earlier provided the same is done in sequence of origination.

Class 7 consists of Founders Investor Claims. Allowed Founders Unit Claims (a) for outstanding interest will be brought current on the Effective Date and (b) will continue to accrue additional interest and then be paid in full within 90 days of the Effective Date unless otherwise agreed by the Holder. Within the sole and absolute discretion of OCVA Holdings, Allowed Founder Unit Claims may have the option to convert such claim into equity of OCVA Holdings at par value. Interest shall not be compounded and shall be based on annual return on investment as indicated by each Founders Agreement.

Class 8 consists of Unsecured Claims other than Oyster For Life Claims, Cage Investment Claims, and/or Founders Unit Claims. Except to the extent that the Holder of a Claim in Class 8 agrees to different treatment, each Holder of an Allowed Unsecured Claim, not otherwise treated in another Class, shall be paid in full on or before six months from the Effective Date.

Class 9 consists of Old Equity Interest Holders who shall receive or retain nothing from the Plan on account of their Equity Interests and their existing Equity Interests shall be cancelled and deemed void.

## **B. Treatment of Property**

Except as otherwise provided in the Plan and/or the Confirmation Order, the Oyster Company of Virginia will retain all Estate Property in accordance with Bankruptcy Code § 1123(a)(5)(A), subject to the valid liens of record of Loughridge (on the Allowed Secured Claim, if any), Middlesex County, and the City of Poquoson as of Order for Relief Date, which shall secure to Holder of such liens only payments due under this Plan. The Oyster Company of Virginia is aware of no valid remaining liens, other than those held by Loughridge (on the Allowed Secured Claim, if any), Middlesex, and the City of Poquoson. To the extent necessary,

the Reorganized Debtor will invoke the provisions of § 1142 of the Bankruptcy Code to expediently extinguish liens and/or encumbrances not specifically contained in the Plan. OCVA Holdings will receive a Lien against ROCVA Docks in an amount of approximately \$150,000.00.

1. Assumption or Rejection of Executory Contracts and Unexpired Leases

On the Effective Date, the Debtor shall assume all contracts/agreements/instruments unless otherwise provided herein. The Confirmation Order shall constitute an order under Bankruptcy Code section 365 assuming all said contracts/agreements/instruments.

Except as otherwise provided in the forgoing paragraph, the Confirmation Order and/or any other Final Order of the Bankruptcy Court, this Plan, or any other Plan Document, the Confirmation Order shall constitute an order under Bankruptcy Code section 365 rejecting all Warrant Subscriptions and other contracts/agreements/instruments the Debtor may identify on or before the Confirmation Hearing. If the rejection of an executory contract or unexpired lease gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the Debtor or its Estate, or its respective successors or properties unless a proof of Claim is filed and served on the Debtor within thirty (30) days after service of a notice of the Effective Date or such other date as is prescribed by the Bankruptcy Court.

2. Cure of Defaults in Connection With Assumption

Any monetary amounts by which each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan is in default will be satisfied, pursuant to § 365(b)(1) of the Bankruptcy Code, at the option of the Debtor or the Reorganized Debtor, as the case may be: (a) by payment of the cure amount in Cash on the Effective Date or as soon as practicable thereafter; or (b) on such other terms as are agreed to by the parties to such Executory Contract or Unexpired Lease.

On or before four (4) Business Days before the commencement of the Confirmation Hearing, the Debtor will provide to all parties of Executory Contracts who have made written request to Tavenner & Beran evidence of adequate assurance of future performance as required by § 365 of the Bankruptcy Code. IF A COUNTER PARTY TO ANY EXECUTORY CONTRACT OR UNEXPIRED LEASE BELIEVES THAT CURE PAYMENTS ARE DUE PURSUANT TO § 365(b)(1) OF THE BANKRUPTCY CODE SUCH COUNTERPARTY MUST FILE AN NOTICE OF ALLEGED CURE AMOUNT NOT LATER THAN FOUR (4) BUSINESS DAYS PRIOR TO THE DATE FIRST SET FOR THE CONFIRMATION HEARING. IF A COUNTER PARTY TO ANY EXECUTORY CONTRACT OR UNEXPIRED LEASE BELIEVES THERE IS A DISPUTE REGARDING THE ABILITY OF THE OYSTER COMPANY OF VIRGINIA, TO PROVIDE "ADEQUATE ASSURANCE OF FUTURE PERFORMANCE" WITHIN THE MEANING OF § 365 OF THE BANKRUPTCY CODE

UNDER THE CONTRACT OR LEASE TO BE ASSUMED, OR ANY OTHER MATTER PERTAINING TO ASSUMPTION, SUCH COUNTERPARTY MUST FILE AN OBJECTION TO THE ASSUMPTION OF ITS EXECUTORY CONTRACT OR UNEXPIRED LEASE BY THE OYSTER COMPANY OF VIRGINIA NOT LATER THAN TWO (2) BUSINESS DAYS PRIOR TO THE DATE FIRST SET FOR THE CONFIRMATION HEARING.

Such objections shall be subject to the jurisdiction of the Bankruptcy Court and shall be resolved by a Final Order. The effective date of the Assumption of an Executory Contract or Unexpired Lease subject to such an objection shall be determined by a Final Order, and the cure payments required by § 365 (b)(1) of the Bankruptcy Code will be made following the entry of a Final Order resolving the dispute and approving the Assumption.

## **VIII. PLAN IMPLEMENTATION**

### **A. Means of Execution**

OCVA Holdings shall be the vehicle through which the initial liquidity necessary to execute the Plan stems. OCVA Holdings shall, on the Effective Date, pay the Allowed Loughridge Secured Claim, if any, in full by purchasing said note and obtaining the same Collateral position as the Loughridge Secured Claim. In addition, the funds generated through the OCVA Holdings shall facilitate fulfilling the treatment of each Class of Claims as set forth in the Disclosure Statement and in the Plan. Upon cancellation of all Class 9 interests, OCVA Holdings will take control of the Oyster Company of Virginia and its assets. Upon successful approval of the ISNRP, a substantial cash flow will inure to the benefit of all Classes of Claim and the Reorganized Debtor will make distributions according to the appropriate treatment of each Class of Claims at a date going forward from the Confirmation Date.

In addition to the New Equity Contribution that will fund the Plan obligations due to be paid on the Effective Date, OCVA Holdings intends to negotiate with watermen and oyster companies receiving Oysters For Life cages to provide 26 oysters per cage per year for the ten years as recorded by the Oysters For Life cage number date through the Oysters for Life Program at no charge. Further, as additional cages are purchased, through the ISNRP program, additional cash will flow to the Reorganized Debtor. OCVA Holdings will oversee sales and marketing with a focus on utilization of a newly branded HPP oyster through HPP of Virginia and OVCA Holdings. The Reorganized Debtor and OCVA Holdings will also market, through assistance with Virginia Ecological Solutions Foundation, the Reeftek Sentinel and Living Memorial Reef Program. Websites are already in place to further market the same. See [www.ofltest.com](http://www.ofltest.com) to be transferred to the old [www.oystersforlife.com](http://www.oystersforlife.com) and [www.letsfixourbay.org](http://www.letsfixourbay.org).

Attached hereto as Exhibit 6 is a sample of evidence demonstrating OCVA Holdings' ability to assist the Debtor to meet obligations due and owing as of the Effective Date. Present projections, attached hereto as Exhibit 7 in summary form, suggest that implementation of the ISNRP will also bring significant liquidity to the Reorganized Debtor to operate its business and meet its obligations under the Plan.

Pursuant to 11 U.S.C. § 347, Unclaimed Funds shall become property of the Reorganized Debtor.

**B. Employment of Insiders**

The Debtor or Reorganized Debtor may employ Insiders including but not limited to Mr. Nolley. Any compensation paid to an Insider shall be at or below fair market value, if said Insider is Mr. Nolley.

**C. Corporate Structure**

OCVA Holdings will be the Holder of the New Equity Interests. The officers and directors of the Debtor or Reorganized Debtor shall be Mr. Nolley and others as disclosed on or before the Confirmation Hearing.

## **IX. EFFECTS OF CONFIRMATION**

### **A. Binding Effect**

The Plan shall be binding upon and inure to the benefit of the Debtor, all present and former Holders of Claims and Interests, and their respective successors and assigns.

### **B. Discharge of the Debtor**

Pursuant to Bankruptcy Code § 1141(d)(1), and subject to the occurrence of the Effective Date, Confirmation will discharge all Claims against the Debtor except for the obligations and Liens expressly created or preserved by this Plan.

### **C. Injunction**

**EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, THE CONFIRMATION ORDER SHALL PROVIDE, AMONG OTHER THINGS, THAT FROM AND AFTER THE EFFECTIVE DATE ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS AGAINST OR INTERESTS IN THE DEBTOR ARE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THE DEBTOR, ITS ESTATE, OR ANY OF ITS PROPERTY ON ACCOUNT OF ANY SUCH CLAIMS OR INTERESTS: (A) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION OR OTHER PROCEEDING; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE, OR ORDER; (C) CREATING, PERFECTING, OR ENFORCING ANY LIEN OR ENCUMBRANCE; (D) ASSERTING A SETOFF, RIGHT OF SUBROGATION, OR RECOUPMENT OF ANY KIND AGAINST ANY DEBT, LIABILITY, OR OBLIGATION DUE TO THE DEBTOR, EXCEPT AS SET FORTH IN ARTICLE VI.G.2 OF THE PLAN; AND (E) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN; PROVIDED, HOWEVER, THAT NOTHING CONTAINED HEREIN SHALL PRECLUDE SUCH ENTITIES FROM EXERCISING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS OF THE PLAN OR THE CONFIRMATION ORDER.**

### **D. Term of Bankruptcy Injunction or Stays**

All injunctions or stays provided for in this Chapter 11 Case under Bankruptcy Code §§ 105 or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect through and including the Effective Date. Upon the Effective Date, the injunction provided in Article X.C of the Plan shall apply.

### **E. Indemnification Obligations**

Except as otherwise provided in the Plan or any contract, instrument, release, or other agreement or document entered into in connection with the Plan, any and all indemnification obligations that the Debtor has pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or any other document, or applicable law, shall be rejected as of the Effective Date, to the extent executory. Nothing in the Plan shall be deemed to release the Debtor's insurers from any claims that might be asserted by counter-parties to contracts or agreements providing the indemnification by and of the Debtor, to the extent of available coverage.

### **F. Third-Party Injunction**

Mr. Nolley has personally guaranteed certain obligations of the Debtor. The success of the Debtor's reorganization depends upon the undistracted efforts of Mr. Nolley on behalf of the Debtor after Confirmation. As a result, creditors shall be enjoined from attempting to collect or enforce in any manner, including by litigation or other use of legal process, obligations for which the Debtor is primarily liable from Mr. Nolley, or from his assets, so long as the Debtor is not in default under the Plan.

## **X. ALTERNATIVES TO THE PLAN**

### **A. Best Interest of Creditors**

The Oyster Company of Virginia has proposed the Plan that provides a mechanism to maximize the value of Estate Property in a manner that will satisfy all Secured and Priority Allowed Claims (while adhering to the Bankruptcy Code and Bankruptcy Rules). In addition, the Plan provides for a significant (if not complete) distribution to Unsecured Creditors. Accordingly, the Oyster Company of Virginia believes the Plan is in the best interest of creditors and other parties-in-interest.

### **B. Hypothetical Liquidation Analysis**

Section 1129(a)(7)(A)(ii) of the Bankruptcy Code requires that Holders of Claims that are Impaired under the Plan who do not vote for the Plan must receive property under the Plan worth, as of the Effective Date, at least as much as the amount they would receive if the Oyster Company of Virginia were liquidated in a Chapter 7 bankruptcy. The Oyster Company of Virginia believes that the distribution under the Plan is preferable to the distribution creditors would receive if the Debtor's estate was liquidated under Chapter 7.

In a hypothetical Chapter 7, if estate property has equity, the Chapter 7 Trustee would first reduce said property to Chapter 7 Proceeds. The first question a Chapter 7 Trustee would ask is whether there is sufficient equity in the property to justify his or her administration of the property. In making a decision not to abandon the property and instead to administer it, the



Chapter 7 Trustee would have to be confident that he or she could obtain more than the value of the secured claims on the property after paying the operating costs and costs of sale.

A Chapter 7 Trustee is charged under Bankruptcy Code § 704(1) to perform his or her duties expeditiously. If the Chapter 7 Trustee concludes that he or she should liquidate rather than abandon the property, a Trustee would be under a duty to liquidate the property expeditiously.

Once the estate property is liquidated, the Chapter 7 Trustee would then be required to pay the Chapter 7 Proceeds in the order outlined below. If the Chapter 7 Proceeds were insufficient to satisfy each category of Claims, the Chapter 7 Proceeds would be shared pro rata by the claimants in that category:

1. The costs of preserving and liquidating the assets.
2. Allowed Claims secured by the property that was sold, including principal and accrued interest when the value of the collateral exceeds the amount of the secured claim. To the extent that a secured creditor is not paid in full from the sale of its collateral, the balance of the claim would be an unsecured claim.
3. The costs and expenses of the Chapter 7 proceeding. These costs and expenses may include:
  - a. paying professionals to file contested matters with the Bankruptcy Court, to obtain required approval, to prepare and file income tax returns, to make reports to governmental agencies and to perform other acts for which their employment has been approved;
  - b. paying tax liabilities incurred by the Estate; and,
  - c. paying the expenses and fees of the Chapter 7 Trustee.
4. Unpaid expenses incurred by the Oyster Company of Virginia during the Chapter 11 Case, including:
  - a. paying professionals to file contested matters with the Bankruptcy Court, to obtain required approvals, to prepare and file income tax returns, to make reports to governmental agencies, and to perform other acts for which their employment has been approved;
  - b. paying tax liabilities incurred by the Estates, and,
  - c. compensation for the court-approved fees of attorneys and other professionals.
5. Priority Claims; and

6. Unsecured Claims, including the unsecured claims arising from the rejection of the Oyster Company of Virginia' executory contracts and unexpired leases.

## **XI. TAX CONSEQUENCES OF THE PLAN**

The federal income tax consequences of the Plan are complex and subject to significant uncertainties. The Oyster Company of Virginia has not requested a ruling from the IRS or an opinion of counsel concerning same. In addition, this summary does not discuss all aspects of federal income taxation that may be relevant to a particular creditor in light of its individual investment circumstances or to certain types of Holders subject to special treatment under the federal income tax laws. There also may be state, local, or other tax considerations applicable to each holder.

**ACCORDINGLY, EACH CLAIM HOLDER IS URGED TO CONSULT ITS OWN TAX ADVISOR AS TO THE CONSEQUENCES OF THE PLAN TO IT UNDER FEDERAL AND APPLICABLE STATE, LOCAL AND FOREIGN TAX LAWS.**

## **XII. CONFIRMATION PROCEDURES**

### **A. Confirmation Hearing**

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing to determine whether a plan of reorganization should be confirmed. A Hearing on Confirmation of the Plan will be scheduled and notice thereof will be circulated in accordance with the Bankruptcy Code and Bankruptcy Rules. The Hearing may be adjourned from time to time by the Court without further notice except for an announcement made at the Hearing.

### **B. Objections to Confirmation**

All objections to Confirmation of the Plan will be heard at the Confirmation Hearing. Bankruptcy Rules 3020 and 9014 govern objections to Confirmation of the Plan. Any Objection to Confirmation of the Plan must be made in writing, filed with the Court, and served upon the following parties within five (5) Business Days before the Hearing on Confirmation:

Lynn L. Tavenner, Esquire  
Tavenner & Beran, PLC  
20 North Eighth Street, Second Floor  
Richmond, VA 23219

Robert B. Van Arsdale, Esquire  
Office of the United States Trustee  
701 East Broad Street, Suite 4304  
Richmond, Virginia 23219

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

**C. Requirements for Confirmation of the Plan**

1. Statutory Requirements.

At the Confirmation Hearing, the Court must determine whether the Plan meets the requirements for Confirmation set forth in § 1129(a) of the Bankruptcy Code. The Oyster Company of Virginia believes that the Plan satisfies all the statutory requirements of § 1129(a) of the Bankruptcy Code. The requirements of Bankruptcy Code § 1129(a) 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 proponent, the Oyster Company of Virginia, or a person issuing securities or acquiring property under the Plan, for services or costs and expenses in or in connection with the case, or in connection with the Plan and incident to the case, has been approved by or is subject to the approval of the Bankruptcy Court as reasonable.
5. The individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the Oyster Company of Virginia, an affiliate of the Oyster Company of Virginia participating in a joint plan with the Oyster Company of Virginia or a successor to the Oyster Company of Virginia under the Plan; and
  - ii. the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and equity security holders 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 Reorganized Debtor, and the nature of any compensation for such Insider.
6. Does not apply.
7. Treatment With respect to each Impaired class of Claims or interest:
  - 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 Oyster Company of Virginia 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, each Holder of a Claim of the 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 it is not less than the value of such Holder's interest in the property that secures such Claims.
8. With respect to each class of Claims or interest –
- (1) the Class has accepted the Plan; or
  - (2) the 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)(2) or 507(a)(3) 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)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) 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
    - iii. Priority Claims must be paid in full in the amount of the Allowed Priority Claims in not less than equal quarterly payments within five (5) years from the date of the order for relief and in a manner not less favorable than junior classes.
10. If a class of Claims is Impaired under the Plan, at least one class of Claims that is Impaired under the Plan 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 reorganization of the Oyster Company of Virginia or any successor to the Oyster Company of Virginia under the Plan, unless such liquidation or reorganization is proposed in the Plan.
12. All fees payable under 28 U.S. C. § 1930 as determined by the Bankruptcy Court at the hearing on Confirmation of the Plan, have been paid or the Plan provides for the payment of all such fees on the Effective Date of the Plan.
13. The Plan provides for the continuation after its effective date of payment of all retiree benefits as that term is defined in § 1114 of the Bankruptcy Code at the level established pursuant to Subsection (e)(1)(B) or (g) of § 1114 of the Bankruptcy Code, at any time prior to confirmation of the Plan, for the duration of the period the Oyster Company of Virginia has obligated itself to provide such benefits.

**D. Acceptance of the Plan.**

Pursuant to 11 U.S.C. § 1124(1) the “plan leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest.” Therefore, pursuant to 11 U.S.C. § 1126(f), “Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted [each] plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.”

The Bankruptcy Code defines acceptance of a Plan by a class of Claims as acceptance by Holders of at least two-thirds in dollar amount and a majority in number of Claims in that class which actually cast Ballots for acceptance or rejection of the Plan. Only the classes of Claims which are Impaired under a Plan are entitled to accept or reject the Plan. A class is “Impaired” if legal, equitable or contractual rights attaching to the Claims or interests in that class are modified.

**E. Non-Acceptance and “Cram Down.”**

Even if a class of Impaired Claims or interests does not accept the Plan, the Oyster Company of Virginia has the right to request that the Plan be confirmed pursuant to § 1129(b) of the Bankruptcy Code, the “Cram Down” provision. As long as one Impaired class votes in favor of the Plan, the Court may confirm the Plan if the Bankruptcy Court determines that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to each rejecting class. A Plan “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 and interests. “Fair and equitable” has different meanings with respect to the treatment of Secured and Unsecured Claims as well as the treatment of Equity. In general, § 1129(b) establishes that the treatment of classes of Claims and interests is fair and equitable as long as all junior classes are treated in

accordance with the “absolute priority” rule which requires that each dissenting class be paid in full before a junior class receive anything under the Plan.

### **XIII. VOTING PROCEDURES AND REQUIREMENTS**

#### **A. Confirmation Through Voting**

The Bankruptcy Court will confirm the Plan only if all of the requirements of § 1129 of the Bankruptcy Code are met. Among the requirements for Confirmation are that the Plan (i) is accepted by all Impaired classes of Claims entitled to vote or, if rejected by an Impaired class, that the Plan “does not discriminate unfairly” and is “fair and equitable” as to such class and as to the Impaired classes of Claims and Equity Interests that are deemed to reject the Plan, (ii) is feasible and (iii) is in the “best interests” of the Holders of Claims and Equity Interests impaired under the Plan.

#### **B. Ballots**

Creditors entitled to vote will receive Ballots on which to record their acceptances or rejections of the Plan. You must complete your Ballot and return it to counsel for the Oyster Company of Virginia who will tally the votes and report the results to the Court at the Hearing on Confirmation of the Plan. Please complete the Ballot sent to you with this Disclosure Statement, sign the original, and return it to counsel for the Oyster Company of Virginia. If no members of a class tender a vote, that class will be deemed to accept their treatment.

#### **C. Entitlement to Vote**

A Holder of a Claim against the Oyster Company of Virginia is entitled to vote to accept or reject the Plan only if:

- (1) The Bankruptcy Court has not previously disallowed the Claim;
- (2) The Claim is Impaired under the Plan; and
- (3) The Claim is not of a class that is deemed to have rejected the Plan pursuant to § 1126(g) of the Bankruptcy Code;

And either:

- a. The Oyster Company of Virginia has not scheduled the Claim as being Disputed, Contingent or Unliquidated; or
- b. The Holder of the Claim has filed a Proof of Claim or interest on or before the last date set by the Bankruptcy Court for such filing.

Any Claim to which an objection has been filed is not entitled to vote unless the Bankruptcy Court temporarily allows such Claim in an amount that it deems proper for the purpose of voting on the Plan. In addition, a vote may be disregarded if the Bankruptcy Court determines that such vote was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

**D. Effect of Failure to Vote**

If a creditor or Holder of an interest does not return a fully completed Ballot within the specified time to the Oyster Company of Virginia's attorneys, neither the creditor nor the amount of its Claim or the amount of the Holder's interest is counted to determine acceptance or rejection of the Plan. If you are entitled to vote and do not, the Ballots will be tallied as though you do not exist. If no members of a class tender a vote, that Class will be deemed to accept their treatment.

**XIV. CONCLUSION**

The Oyster Company of Virginia believes that the Plan is in the best interest of all creditors. Accordingly, the Oyster Company of Virginia urges Holders of Impaired Claims to vote to accept the Plan and to return their Ballots with all due speed.

Dated: July 5, 2017  
Richmond, Virginia

OYSTER COMPANY OF VIRGINIA

By: /s/ W. Tolar Nolley

W. Tolar Nolley

By: /s/ Paula S. Beran  
Lynn L. Tavenner (Va. Bar No. 30083)  
Paula S. Beran (Va. Bar No. 34679)  
David N. Tabakin (Va. Bar No. 82709)  
Tavenner & Beran, PLC  
20 North Eighth Street, Second Floor  
Richmond, Virginia 23219  
Telephone: (804) 783-8300  
Telecopy: (804) 783-0178

*Counsel for the Oyster Company of Virginia*