

**UNITED FUEL & ENERGY CORPORATION,  
A NEVADA CORPORATION  
1800 W. KATELLA AVE., SUITE 102  
ORANGE, CA 92867  
TEL: (714) 923-3025**

January 7, 2009

**STATEMENT OF SOLICITATION/RECOMMENDATION**

To: Each Holder of Common Stock of United Fuel & Energy Corporation

**I. Subject Company Information.**

(a) *Name and Address.* The name of the subject company is United Fuel & Energy Corporation, a Nevada corporation (the “*Company*”). The principal executive offices of the subject company are located at 1800 W. Katella Ave., Suite 102, Orange, CA 92867 and its telephone number is (714) 923-3025.

(b) *Securities.* The title of the class of equity securities to which this Solicitation/Recommendation Statement (this “*Statement*”) relates is the Company’s Common Stock, par value \$0.001 per share (the “*Common Stock*”). As of December 9, 2009, 40,905,904 shares of Common Stock were issued and outstanding.

**II. Identity and Background of Person Sending this Statement.**

(a) *Name and Address.* The name, business address and business telephone number of the Company, which is the person sending this Statement, are set forth in Paragraph I(a) above, which information is incorporated herein by reference.

(b) *Tender Offer.* This Statement relates to a cash tender offer by Goldstream, Inc., a Nevada corporation (“*Acquisition Sub*”) and a wholly-owned subsidiary of Southern Counties Oil Co., a California Limited Partnership (“*Parent*” or “*SC Fuels*”), disclosed in an Offer to Purchase, dated January 7, 2009 (as amended or supplemented from time to time, the “*Offer to Purchase*”), to purchase all of the issued and outstanding shares of Common Stock not already owned by Parent, Acquisition Sub, Frank P. Greinke, or their respective affiliates (the “*Shares*”), at a purchase price of \$0.30 per share (such amount, or any other amount per share paid pursuant to such tender offer, the “*Offer Price*”), net to the seller in cash, without interest and less any required withholding taxes, upon the terms and subject to the conditions set forth in the related Letter of Transmittal (as amended or supplemented from time to time, the “*Letter of Transmittal*,” which, together with the Offer to Purchase, constitute the “*Offer*”). The Offer to Purchase and Letter of Transmittal are being mailed with this Statement. The Offer is being commenced pursuant to the terms of an Agreement and Plan of Merger dated December 24, 2009 (the “*Merger Agreement*”), by and among the Company, the Parent and the Acquisition Sub, which is attached as Appendix A hereto. Pursuant to the Merger Agreement, following the

completion of the Offer, the Company will be merged with and into the Acquisition Sub (the “*Merger*”).

According to the Offer to Purchase, the address of the principal executive offices of Parent and the Acquisition Sub is 1800 W. Katella Ave., Suite 400, Orange, CA 92867, and the telephone number of the principal executive offices of Parent is (714) 744-7140.

The Company has supplied all information contained in this Statement about the Company. Parent has supplied all information contained in this Statement about Parent and Acquisition Sub. The Company does not take any responsibility for the accuracy or completeness of any information described herein contained in the Offer.

### **III. Past Contacts, Transactions, Negotiations and Agreements.**

Except as set forth in this Paragraph III or in Paragraph IV below, as of the date hereof, there are no material agreements, arrangements or understandings or any actual or potential conflicts of interest between the Company or its affiliates and (i) the Company’s executive officers, directors or affiliates or (ii) Parent, Acquisition Sub or their respective executive officers, directors or affiliates.

Certain members of management and the Company’s Board of Directors (the “*Board*” or the “*Board of Directors*”) may be deemed to have interests in the transactions contemplated by the Merger Agreement that are different from or in addition to the interests of Company shareholders, generally. These interests may create potential conflicts of interest. The Board was aware of these interests and considered them, among other matters, in approving the Merger Agreement and the transactions contemplated thereby.

(a) *Arrangements with Current Directors, Executive Officers and Affiliates of the Company.*

#### *Cash Consideration Payable Pursuant to the Offer*

Cash Consideration for Shares. If the Company’s directors and executive officers were to tender any Shares they own for purchase pursuant to the Offer, they would receive the same cash consideration on the same terms and conditions as the other shareholders of the Company. As of December 9, 2009, to the Company’s knowledge and belief, the Company’s directors and executive officers owned 4,888,290 Shares in the aggregate (excluding stock options and Shares beneficially owned by Frank P. Greinke). If the directors and executive officers (excluding Mr. Greinke) were to tender all of their Shares for purchase pursuant to the Offer and those Shares were accepted for purchase and purchased by Acquisition Sub, the directors and executive officers would receive an aggregate of approximately \$1,466,487 in cash (less certain applicable taxes).

No Cash Consideration for Options. As of December 18, 2009, the Company’s executive officers held options to purchase 200,000 shares of Common Stock in the aggregate with exercise prices of \$.75 per share. As a result of the exercise prices of all outstanding stock options held by the executive officers of the Company on December 18, 2009, and the terms of

the Merger Agreement, no executive officer will be entitled to receive any payment for their stock options upon consummation of the Offer or the other transactions contemplated by the Merger Agreement.

*Recent Stock Sale by Thomas Kelly*

To the Company's knowledge and belief, on December 18, 2009, SC Fuels entered into a stock purchase agreement with Mr. Kelly, one of the Company's directors, and certain other shareholders to purchase an aggregate of 6,160,913 shares of Common Stock at a price of \$.30 per share. To the Company's knowledge and belief, Mr. Kelly will receive \$1,201,800 in connection with this transaction.

*Security Ownership of Directors and Executive Officers*

To the Company's knowledge and belief, the table below sets forth information concerning the beneficial ownership of the Common Stock held by each member of the Board of Directors and each of the Company's executive officers as of December 9, 2009.

The Company has determined beneficial ownership in accordance with the rules of the U.S. Securities and Exchange Commission. Except as indicated by the footnotes below, the Company believes, based on the information available to it, that the persons and entities named in the table below have sole voting and investment power with respect to all shares of Common Stock that they beneficially own, subject to applicable community property laws.

<b>Name</b>	<b>Number of Shares (1)</b>
Frank P. Greinke	33,248,558 (2)
Thomas E. Kelly	4,006,000
Richard Bechtel	35,989
E. H. (Gene) Dewhurst	4,499,190 (3)
Jesse B. Tutor	184,842
Jack C. Pester	10,082
Joseph Juliano	218,187 (4)
Marilyn Lobel	20,830 (5)

- (1) The number and percentage of shares beneficially owned is based on the Company's knowledge and belief based on the information that is available to the Company and is determined in accordance with Rule 13d-3 of the Securities Exchange Act of 1934, as amended, and the information is not necessarily indicative of beneficial ownership for any other purpose. Under such rule, beneficial ownership includes any shares as to which each shareholder, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, has or shares voting power or investment power and also any shares that the shareholder has the right to acquire within 60 days.
- (2) Includes 24,641,276 shares held by the Greinke Business Living Trust Dated April 20, 1999 of which Mr. Greinke is the trustee, and 450,000 shares held by United Fuel Investments, L.P., of which SC Fuels is the general partner. Mr. Greinke is the sole

owner of the general partner of SC Fuels. Includes 8,090,000 shares issuable through the conversion of 12,135 shares of Series A Preferred Stock held by the Greinke Personal Living Trust of which Mr. Greinke is the trustee (the "*Greinke Trust*"). Excludes 6,160,913 shares purchased by SC Fuels from Mr. Kelly and certain other shareholders pursuant to that certain stock purchase agreement dated December 18, 2009. Mr. Greinke disclaims beneficial ownership of the 450,000 shares held by United Fuel Investments, L.P. except to the extent of his pecuniary interest therein.

- (3) Includes 61,658 shares for which Mr. Dewhurst has sole voting and dispositive power, 55,000 shares held by a family limited partnership of which Mr. Dewhurst shares control of the sole general partner, 5,000 shares of Common Stock held in Mr. Dewhurst's individual retirement account, for which Mr. Dewhurst is the beneficial owner, and 371,532 shares for which Mr. Dewhurst has shared voting and dispositive power. The 371,532 shares for which Mr. Dewhurst has shared voting and dispositive power are held of record by Falcon Seaboard Investment Company, L.P. Mr. Dewhurst is a co-trustee of a trust that serves as the managing member of a limited liability company that serves as the general partner of Falcon Seaboard Investment Company, L.P. Also includes 4,006,000 shares of Common Stock beneficially held by Thomas E. Kelly as Mr. Kelly has entered into a Voting Agreement with Falcon Seaboard Investment Company, L.P., pursuant to which he agreed to vote (or cause to be voted) all of his shares (and any and all securities issued or issuable in respect thereof) in favor of electing one member designated by Falcon Seaboard Investment Company, L.P. to the Board of Directors and against (or to otherwise withhold votes from) any nominees for election to the Board of Directors to whom Falcon Seaboard Investment Company, L.P. has notified him that it reasonably objects.
- (4) Includes 50,000 shares issuable upon the exercise of options exercisable within 60 days from December 9, 2009. Includes 10,000 shares held in trust for Mr. Juliano's son.
- (5) Includes 20,830 shares issuable upon the exercise of options exercisable within 60 days of December 9, 2009.

#### *Indemnification and Insurance*

The Company's articles of incorporation provide that the Company is required to indemnify its directors and officers and the Company's bylaws provide that the Company is required to indemnify its directors, officers, employees and agents, in each case to the fullest extent permitted by Nevada law. The Company's bylaws also provide that the Company may advance expenses incurred by a director, officer, employee or agent in advance of the final disposition of any action or proceeding, and permit the Company to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in that capacity regardless of whether the Company would otherwise be permitted to indemnify him or her under the provisions of Nevada law.

The Company has entered into agreements to indemnify its directors and certain officers as determined by the Board of Directors. With certain exceptions, these agreements provide for indemnification for related expenses including, among other things, attorneys' fees, judgments,

finances and settlement amounts incurred by any of these individuals in any action or proceeding. This description of the indemnification agreements entered into between the Company and its directors and officers is qualified in its entirety by reference to the form of indemnification agreement attached as Appendix B hereto, which is incorporated herein by reference. The Company also maintains directors' and officers' liability insurance that insures the Company's directors and officers against certain losses and insures the Company with respect to its obligations to indemnify its directors and officers.

Parent has agreed to cause the surviving corporation in the Merger (the "**Surviving Corporation**") to indemnify and hold harmless all past and present officers, directors and employees of the Company in respect of acts or omissions occurring at or prior to the date on which the Merger becomes effective to the fullest extent permitted under applicable law or as provided under the Company's articles of incorporation, bylaws and indemnification agreements, if applicable. Parent has also agreed to cause the Surviving Corporation to purchase a three-year "tail" policy in an amount and scope no less favorable than the Company's current directors' and officers' insurance policy. The purchase of such a "tail" policy is a non-waivable condition to closing under the Merger Agreement.

#### *Director Compensation*

Each member of the Board of Directors receives a quarterly cash retainer payment equal to \$7,500 for each fiscal quarter during which such member serves as director. Each member of the Board of Directors who serves as the chairman of a committee of the Board of Directors receives an additional cash retainer payment equal to \$1,250 for each fiscal quarter during which he serves in such capacity. Each member of the Board of Directors who attends, in person, by teleconference or any other permissible method, any meeting of the Board of Directors or any meeting of a committee of the Board of Directors upon which such member serves, receives, in consideration of such attendance, a cash payment equal to \$500 and reimbursement of travel and other expenses related to such attendance incurred by such member.

#### *Transactions with Thomas Kelly*

On December 31, 2008, the Company entered into and closed an Asset Purchase Agreement (the "**Purchase Agreement**") by and between the Company and Propane Direct Enterprises, LLC, a company newly established by Mr. Kelly. Pursuant to the Purchase Agreement, the Company agreed to sell substantially all of the assets of its propane distribution business to Propane Direct Enterprises, LLC, excluding a \$3.4 million portion of accounts receivable that was retained by the Company, for gross proceeds of \$9.8 million. The purchase price was paid by the delivery of three promissory notes: (i) a short-term unsecured promissory note for \$7.7 million; (ii) a subordinated unsecured promissory note for approximately \$1.5 million with a termination date of January 31, 2014 and bearing an annual interest rate of 3% over 12-month London Interbank Offered Rate ("LIBOR"); and (iii) a deed of trust note for \$0.6 million with a termination date of January 31, 2014 and bearing interest at an annual rate of 4% over LIBOR. The Company received full payment of the promissory note for \$7.7 million in January 2009 and continues to receive monthly payments on the other two notes in accordance with the terms of the notes.

The Company purchases electricity from a company in which Mr. Kelly has a 15% interest. Payments for electricity to this company were approximately \$0.1 million for each of the years ended December 31, 2008 and 2007 and for the eleven months ended November 30, 2009.

The Company utilizes aviation services from two companies of which Mr. Kelly owns 100% and 50% respectively. Payments to these two companies aggregated approximately \$35,000 and \$0.2 million for the years ended December 31, 2008 and 2007, respectively. No services were used by the Company in 2009.

The Company sells fuel to two companies in which Mr. Kelly owns interests of less than 10%. Sales aggregated \$1.7 million to these companies for each of the years ended December 31, 2008 and 2007, and \$9,000 to one of these companies for the eleven months ended November 30, 2009.

*(b) Arrangements with Frank P. Greinke*

*SC Fuels*

SC Fuels is owned and controlled by Mr. Greinke, the Company's Chairman of the Board and Chief Executive Officer.

*Joseph Juliano*

Mr. Juliano, the Company's President and Chief Operating Officer, is the son-in-law of Mr. Greinke.

*Purchase of Series A Preferred Stock*

In September 2009, the Greinke Trust acquired all 12,135 outstanding shares of the Company's Series A Preferred Stock. As holder of the Series A Preferred Stock, the Greinke Trust is entitled to dividends of 8% per annum, a liquidation preference, optional conversion into Common Stock at a conversion ratio of 666 and two-thirds shares of Common Stock for each share of Series A Preferred Stock, anti-dilution protection, optional redemption after March 31, 2011 by the holder at \$1,250 per share and special voting rights, including the right to vote on all matters presented to the Company's shareholders for their action or consideration (on an as-converted basis) and the right to elect one member to the Board of Directors (voting together as a single class).

*Real Estate Transactions*

In September 2008, the Company relocated its corporate offices and began renting facilities from Madrona Real Estate, LLC, an entity owned by Mr. Greinke ("*Madrona*"). Payments relating to the corporate offices aggregated \$39,000 for the year ended December 31, 2008 and \$.2 million through the eight months ended August 31, 2009. Effective September 1, 2009, the Company assigned its rights and obligations under this lease to SC Fuels and leases back a reduced portion of the space for \$4,000 per month. The Company paid SC Fuels \$12,000

for the three months from September 1, 2009 to November 30, 2009. Cardlock Fuels System, Inc., a wholly-owned subsidiary of the Company (“*CFS*”), leases real property on which its cardlock fueling stations are located from Madrona. During the eleven months ended November 30, 2009, payments for such rents aggregated \$.4 million. During the year ended December 31, 2008, payments aggregated \$0.5 million for such rents and for the period October 1, 2007 through December 31, 2007, payments aggregated \$0.1 million for such rents. In addition, Madrona owned a residence in Midland, Texas, that the Company utilized during 2008 and 2007 for visiting executives. Rental payments for this residence aggregated \$29,000 and \$9,500 for 2008 and 2007, respectively.

*Lending Transactions.* The Greinke Trust is a co-lender with the other bank lenders under the Company’s revolving credit facility. For the year ended December 31, 2008, \$43,000 of interest was paid to the Greinke Trust in connection with a \$5.0 million promissory note issued by the Company to the Greinke Trust. No interest was paid under this arrangement in 2009.

(c) *Arrangements with SC Fuels*

*Merger Agreement.*

The summary of the Merger Agreement and the description of the conditions of the Offer contained in the Offer to Purchase that accompanies this Statement are incorporated herein by reference. Such summary and description are qualified in their entirety by reference to the Merger Agreement, which is attached as Appendix A hereto and incorporated herein by reference to provide information regarding its terms.

*Supply Agreement*

The Company purchases substantially all of its requirements of bulk fuels with payment terms beyond the industry’s standard from SC Fuels. Billings from SC Fuels aggregated approximately \$130.4 million and \$48.0 million for the years ended December 31, 2008 and 2007, respectively, and \$74.4 million for the eleven months ended November 30, 2009. Additionally, interest expense related to payments for these billings totaled \$1.1 million for the eleven months ended November 30, 2009, \$0.5 million for the year ended December 31, 2008, and the Company had no interest expense for the same period in 2007. The Company hauls bulk fuels for hire for SC Fuels and billings to SC Fuels aggregated \$0.6 million for the eleven months ended November 30, 2009, \$0.4 million for the year ended December 31, 2008 and \$25,000 during the period October 1, 2007 through December 31, 2007.

The Company is currently dependent upon SC Fuels to fund the Company’s short-term working capital requirements. As of December 18, 2009, the Company had \$30,933,111 outstanding for such borrowings, which amount is included in accounts payable to related parties on the consolidated balance sheet.

*Security Agreement*

On July 30, 2009, the Company entered into a credit agreement to borrow approximately \$3.8 million from SC Fuels (the “*Affiliated Loan*”). The proceeds from this *Affiliated Loan* were

used to pay off the term loan in the same amount under the Second Amended and Restated Financing Agreement held by its bank lending group. The Affiliated Loan matures in August 2013 and requires monthly principal payments of \$39,766 for the first year and \$92,787 for all subsequent months for the term of the loan. The interest rate on the Affiliated Loan is equal to one-month LIBOR plus 6.25% per annum with an additional 2.00% per annum for the default rate upon the occurrence and during the continuation of an event of default under the Affiliated Loan or the Company's revolving credit facility. The borrowings under the Affiliated Loan are secured by a first position lien against all the Company's real estate and equipment now owned or acquired during the term of the Affiliated Loan (the "**First Lien Collateral**") and a subordinated second lien against all other assets of the Company, primarily its trade accounts receivable, inventory, investment property and intangibles (the "**Second Lien Collateral**"). SC Fuels's security interest in the First Lien Collateral and Second Lien Collateral are subject to the terms of an Intercreditor Agreement entered into on July 30, 2009, among the Company, CIT, as agent for the bank lending group under the Second Amended and Restated Financing Agreement, and SC Fuels.

Under the terms of the Intercreditor Agreement, SC Fuels agreed that CIT has the exclusive right to manage, perform and enforce the terms of the Company's revolving credit facility and SC Fuels may not take any action, exercise any rights, or initiate any proceedings with respect to the First Lien Collateral or the Second Lien Collateral until all amounts owed to the bank lending group under the Company's revolving credit facility are paid in full in cash and all commitments under the Company's revolving credit facility have terminated.

#### *Shared Services Agreement*

Following the acquisition of CFS in October 2007, the Company has utilized management and accounting services from SC Fuels. Under the terms of a Transition Services Agreement, the Company was billed \$1.1 million for the year ended December 31, 2008 and \$0.2 million during the period from October 1, 2007 through December 31, 2007. In January 2009, the Company entered into a Mutual Service Agreement with SC Fuels, in which SC Fuels agreed to provide the Company with additional management and accounting services, including information technology services, and the Company agreed to provide SC Fuels with certain human resources and facility services. Effective September 1, 2009, this Mutual Service Agreement was substantially revised to provide additional accounting and credit and collection services. For the eleven months ended November 30, 2009, the Company paid SC Fuels \$1.4 million for all of the shared services.

#### **IV. The Recommendation.**

##### *(a) Recommendation.*

The Board, during a meeting held on December 15, 2009, by the unanimous vote of the directors in attendance, with two directors abstaining, approved and adopted the Merger Agreement and the transactions contemplated thereby and determined that the Offer and the Merger are advisable and fair to, and in the best interests of, the Company and its shareholders.

Accordingly, the Board recommends that the holders of the Shares accept and tender their Shares pursuant to the Offer.

(b) *Background of the Transaction.*

On September 24, 2009, members of the Board who were potentially independent and disinterested with respect to a proposed transaction between the Company and certain of its affiliates (the “**Members**”) met with the Chief Financial Officer of the Company (the “**CFO**”) and Cox, Smith, Matthews, Inc., counsel for the Company (“**Company Counsel**”) in anticipation of their appointment by the Board to a special committee of the Board (the “**Special Committee**”) to consider a proposed transaction (the “**Proposed Transaction**”) among the Company and SC Fuels, which is controlled by Frank P. Greinke, a director and officer of the Company, and affiliates of SC Fuels or Mr. Greinke. Company Counsel reviewed the legal standards for independence and disinterestedness of directors with the Members and explained the procedures that any Special Committee should follow in considering any proposed transaction. Company Counsel discussed whether each of the Members would be considered independent and disinterested with respect to any proposed transaction. Company Counsel further discussed the possible structure for any proposed transaction and additional issues of process and timing with respect to any proposed transaction. The CFO summarized her discussions with several financial firms regarding the provision of a fairness opinion in connection with any proposed transactions. The Members discussed these and other financial firms.

On October 1, 2009, the Board received a non-binding letter of intent (the “**LOI**”) from SC Fuels outlining the general terms and conditions of the Proposed Transaction whereby SC Fuels, through Acquisition Sub, which is a wholly-owned subsidiary corporation to be formed under the laws of the State of Nevada, would acquire the Company through a merger of the Company with SC Fuels. The LOI described the following terms of the Proposed Transaction: (1) SC Fuels would commence the Offer to purchase all of the issued and outstanding Shares not already owned by SC Fuels, the Acquisition Sub, Mr. Greinke or their respective affiliates, at an Offer Price of \$0.20 per Share net to the seller in cash; (2) the Offer would commence upon the execution and delivery of a definitive agreement and plan of merger between SC Fuels and the Company; (3) the fulfillment of certain conditions, including that the number of Shares tendered pursuant to the Offer would, when added to the shares owned by SC Fuels and its affiliates, result in SC Fuels owning 75% of the Common Stock; (4) the Merger Agreement would provide for the grant by the Company to SC Fuels of an irrevocable option (the “**Top-Up Option**”) to purchase, at a per share price equal to the Offer Price, newly-issued shares of Common Stock in an amount up to the lowest number of shares of Common Stock that, when added to the number of shares of Common Stock owned by SC Fuels and its affiliates at the time of the exercise of the Top-Up Option, would constitute one share of Common Stock more than 90% of the total shares of Common Stock outstanding on a fully-diluted basis; and (5) other customary representations, warranties, covenants, indemnities and other agreements.

On October 6, 2009, the Board established the Special Committee, comprised of the Members, who were determined to be directors who are independent and disinterested with respect to the Proposed Transaction, to consider the Proposed Transaction. The resolutions of the Board establishing the Special Committee (the “**Resolutions**”) empowered the Special

Committee to, among other things: (1) determine whether the Proposed Transaction is fair and in the best interests of the Company and its shareholders; (2) recommend to the Board whether it should approve the Proposed Transaction and whether the Board should recommend the Proposed Transaction to the shareholders of the Company; (3) negotiate the price, structure, form and other terms of the Proposed Transaction and the form, terms and conditions of any definitive agreements in connection therewith; (4) explore and negotiate alternatives to the Proposed Transaction; (5) hire its own legal and financial advisors at the Company's expense; and (6) obtain legal or financial opinions. The Resolutions stated that the Board would not approve the Proposed Transaction without a prior favorable recommendation of the Proposed Transaction by the Special Committee. The Resolutions also set the compensation for the members of the Special Committee, which was not contingent on the consummation of the Proposed Transaction or any other transaction, provided for the members of the Special Committee to be reimbursed for any out-of-pocket expenses related to their service in such role and directed the Company and its officers, directors, agents and employees to cooperate with the Special Committee in its investigation of the Proposed Transaction, the Company and any other matter.

On October 6, 2009, the Special Committee met and considered the selection of an independent financial advisor for the Special Committee. The Special Committee also discussed the scope of the work to be performed by its financial advisor. Finally, the Special Committee discussed the selection of an independent legal advisor for the Special Committee.

On October 8, 2009, the Special Committee met and discussed the ongoing selection process for its independent legal and financial advisors. The Special Committee also discussed SC Fuels's willingness to enter into an alternative transaction and the feasibility of the Top-Up Option.

On October 12, 2009, the Special Committee met and reviewed the discussions of the Chairman of the Special Committee (the "***Special Committee Chairman***") with Mr. Greinke, who indicated that he would consider an alternative transaction, including a transaction in which a third-party purchased the shares of stock of the Company held by SC Fuels, Mr. Greinke and their affiliates. The Special Committee discussed the likelihood that, considering the financial condition of the Company and the current interdependencies between SC Fuels and the Company, an alternate buyer for the Company or its businesses would emerge. The Special Committee reviewed proposals from five financial advisory firms and selected three firms to interview for possible retention as an independent financial advisor for the Special Committee. The Special Committee also reviewed proposals from five legal firms and selected three firms to interview for possible retention as an independent legal advisor for the Special Committee.

On October 16, 2009, the Special Committee met and selected Matrix Capital Markets Group ("***Matrix***") as the financial advisor to the Special Committee, pending the Special Committee's negotiation and execution of an engagement letter with Matrix and the Special Committee Chairman's satisfactory discussion with Matrix regarding the scope of its work. The Special Committee selected Fulbright & Jaworski L.L.P. ("***Fulbright***") as the legal advisor to the Special Committee.

On October 20, 2009, the Special Committee Chairman, with the assistance of Fulbright, negotiated the terms of Matrix's engagement letter with Matrix and Matrix's counsel. Fulbright

continued these negotiations on behalf of the Special Committee until October 22, 2009, when Matrix's engagement letter was finalized and executed by the Special Committee Chairman and representatives of Matrix.

On October 21, 2009, Matrix began its diligence regarding the Company and its business and met with the CFO. The Company provided various diligence items to Matrix. Fulbright advised the Special Committee Chairman and the CFO on matters of confidentiality regarding the proceedings of the Special Committee.

On October 26, 2009, the Special Committee met and discussed the engagement of Matrix as its financial advisor, confirming that the engagement letter had been executed. The CFO updated the Special Committee regarding Matrix's progress in interviewing management and stated that Matrix had been given all diligence materials that it requested from the Company. The Special Committee discussed the timing of its process in conjunction with the timing of Matrix's valuation report (the "**Preliminary Matrix Report**"). The CFO was thereafter excused from the meeting. Fulbright verified the independence and disinterestedness of the Members with respect to the Proposed Transaction and discussed certain legal issues with the Special Committee, including confidentiality and the appropriate procedures for the Special Committee to follow in its consideration of the Proposed Transaction. The Special Committee discussed potential alternative transactions, including a piecemeal sale or liquidation of the Company, as well as Matrix's consideration of alternative transactions and historical financial data of the Company.

On October 26, 2009, the Special Committee received from the CFO and reviewed information regarding the historical related party transactions among the Company and SC Fuels, Mr. Greinke and their affiliates. That same day, Fulbright received and reviewed information related to liability insurance coverage for the Company, its directors and officers (the "**D&O Insurance**"). Fulbright continued to review information regarding the D&O Insurance throughout the negotiation process.

From October 26, 2009 until November 9, 2009, Fulbright communicated intermittently with the members of the Special Committee regarding timing and next steps in the Special Committee's process of considering the Proposed Transaction.

On November 9, 2009, the Special Committee met with Fulbright and Matrix to review the Preliminary Matrix Report, which is discussed in further detail below. Matrix reviewed its processes and the valuation methodologies that it employed with the Special Committee, as well as the financial condition of the Company generally. Matrix explained that, under each valuation scenario that it considered, the Common Stock did not have a positive value. Matrix also discussed its consideration of alternative transactions and liquidation with the Special Committee, explaining why it concluded that these options would not produce more value for the shareholders of the Company than the Proposed Transaction. The Special Committee asked Matrix several questions, and an extensive discussion of the Preliminary Matrix Report ensued. Matrix was excused from the meeting, and the Special Committee further discussed the Preliminary Matrix Report in relation to the Proposed Transaction. Fulbright reviewed the Special Committee's role and provided legal advice to the Special Committee on various issues regarding the Proposed Transaction. Matrix returned to the meeting and participated in further

discussions with the Special Committee regarding the Proposed Transaction. Matrix agreed to provide a valuation of the Common Stock based on the price previously paid by Mr. Greinke to purchase preferred stock of the Company in August 2009 (the “*Preferred-Based Valuation*”). The Special Committee further considered that any Offer Price should be substantial enough to entice shareholders of the Company to tender the Shares. The Special Committee decided to propose a counteroffer price of \$0.50 per Share at its meeting with SC Fuels and its representatives the following day.

On November 10, 2009, the Special Committee received and reviewed the Preferred-Based Valuation. The Special Committee met with SC Fuels and its representatives and made a counteroffer of \$0.50 per Share as the Offer Price for the Proposed Transaction. SC Fuels rejected the Special Committee’s counteroffer and offered \$0.25 per Share as the Offer Price. The Special Committee consulted with both Fulbright and Matrix throughout the day.

On November 11, 2009, the Special Committee met with Fulbright to discuss various tax and bankruptcy issues related to the Proposed Transaction, including the value of net operating losses of the Company (the “*NOLs*”) to SC Fuels as a tax asset. The Special Committee decided to propose a counteroffer price of \$0.44 per Share to SC Fuels. The Special Committee Chairman relayed this counteroffer to SC Fuels, which rejected the counteroffer. The Special Committee further consulted with Fulbright and directed Fulbright to discuss the NOLs with SC Fuels’s tax advisor.

On November 12, 2009, Fulbright discussed the issue of the NOLs with SC Fuels’s tax advisor. Fulbright relayed the details of the conversation to the Special Committee.

On November 13, 2009, the Special Committee met with Fulbright to discuss various tax and legal issues, including the NOLs. The Special Committee also requested that both Fulbright and Matrix estimate the costs to the Company of a bankruptcy or other similar reorganization.

Between July 31, 2009 and November 18, 2009, certain members of management of the Company and of SC Fuels met at least once a month with the Company’s bank lending group under its revolving line of credit to discuss a forbearance and renegotiate the terms of such credit facility.

On November 16, 2009, the Special Committee met with Fulbright to discuss the NOLs and other legal issues related to the Proposed Transaction. The Special Committee considered various alternative transactions, including the bankruptcy or reorganization of the Company and the related costs as estimated by both Fulbright and Matrix, and the value of the Common Stock under each of these scenarios, noting that the Common Stock would likely have zero value under any alternative scenario. The Special Committee discussed the Company’s deteriorating financial condition generally. The Special Committee also considered and discussed intangible costs to the Company related to a bankruptcy, such as decreased efficiencies and potential customer loss. The Special Committee discussed alternative structures for the payment of the merger consideration, including partial payment by a note conditioned on the use by SC Fuels of the NOLs. The Special Committee decided to revise its counteroffer price to \$0.35 per Share payable in cash or \$0.30 per Share payable in cash in conjunction with a note for an additional \$0.10 per Share if SC Fuels used the NOLs at some future time.

On November 16, 2009, the Special Committee met with SC Fuels and its representatives, including its tax advisor. The Special Committee relayed its revised counteroffer price of \$0.35 per Share payable in cash or \$0.30 per Share payable in cash in conjunction with a note for an additional \$0.10 per Share if SC Fuels used the NOLs at some future time. SC Fuels and its advisors discussed the revised counteroffer with the Special Committee and ultimately rejected it. SC Fuels and its representatives left the meeting. The Special Committee continued to consult with Fulbright and consider alternative ways to structure the merger consideration. The Special Committee took note of the absence of value to the Common Stock in a bankruptcy scenario and under any alternative transaction. The Special Committee decided, after extensive discussion, to revise its counteroffer price to \$0.30 per Share payable in cash per Share in conjunction with a note for an additional amount per Share, which amount would be determined based upon the actual future use by SC Fuels of the NOLs. SC Fuels and its representatives rejoined the meeting, and the Special Committee proposed its revised counteroffer price to SC Fuels. SC Fuels and its representatives left the meeting to discuss this proposal. The Special Committee continued to consult with Fulbright. SC Fuels and its representatives returned to the meeting and revised its offer to \$0.30 net cash per Share. The Special Committee stated that it would consider this offer. SC Fuels and its representatives left the meeting, and the Special Committee continued to consult with Fulbright.

On November 17, 2009, the Special Committee met with Fulbright to discuss various structural issues regarding its proposed counteroffer. The Special Committee discussed alternatives to the Proposed Transaction, including the value of the Common Stock under any alternative, which it determined would be less than the value that the Common Stock would receive in the Proposed Transaction. The Special Committee also discussed conditions to the Proposed Transaction (the “**Merger Conditions**”), including (1) that Acquisition Sub, SC Fuels, Mr. Greinke and their respective affiliates would not pay a higher price than the Offer Price to any seller for the Common Stock during the Offer; (2) that Acquisition Sub must purchase a majority of the shares not held by SC Fuels, Acquisition Sub, Mr. Greinke or any of their respective affiliates (such shares, the “**Excluded Shares**”) as a condition to the consummation of the Offer, the exercise of the Top-Up Option and the consummation of the Merger (such condition, the “**Minimum Tender Condition**”); and (3) that SC Fuels should cause the Company to provide acceptable D&O Insurance and customary indemnification provisions for the Board, both to continue in effect after the Merger.

On November 17, 2009, the Special Committee met with SC Fuels and its representatives to discuss SC Fuels’s offer of \$0.30 net cash per Share. The Special Committee stated that it would recommend an Offer Price of \$0.30 per Share, conditional upon the Merger Conditions discussed above. SC Fuels’s representatives stated that they would confirm available financing at this Offer Price, consider the Merger Conditions and then meet with the Special Committee. SC Fuels and its representatives left the meeting. The Special Committee continued to consult with Fulbright. Representatives of SC Fuels called the Special Committee to discuss their reservations regarding the Minimum Tender Condition. Fulbright spoke with legal advisors to SC Fuels about the Minimum Tender Condition.

On November 18, 2009, the Special Committee met with Fulbright to discuss the Minimum Tender Condition and other legal issues. Later that day, Fulbright met with legal advisors to SC Fuels to further discuss the Minimum Tender Condition.

On November 19, 2009, Fulbright continued its discussions with SC Fuels's legal advisors regarding the Minimum Tender Condition, and relayed its discussions to the Special Committee Chairman on November 20, 2009.

On November 23, 2009, the Special Committee met with Fulbright to discuss the current ownership of the Common Stock and the Minimum Tender Condition, along with other legal issues. The Special Committee discussed the pushback from SC Fuels regarding the Minimum Tender Condition and considered its options going forward. The Special Committee decided to require the Minimum Tender Condition as a condition to the consummation of the Offer and the Merger and as a condition to the exercise of the Top-Up Option.

On November 24, 2009, Fulbright discussed various issues related to the D&O Insurance and indemnification of the Board by the Company with SC Fuels's legal advisors.

On November 25, 2009, the Special Committee met with SC Fuels and its representatives regarding the Merger Conditions, including the Minimum Tender Condition. SC Fuels agreed to the Minimum Tender Condition and the other Merger Conditions.

On November 25, 2009, legal advisors to SC Fuels sent a draft of a revised letter of intent (the "**Revised LOI**") regarding the Proposed Transaction to Fulbright, incorporating the Merger Conditions and the new Offer Price of \$0.30 net cash per Share. Fulbright, in consultation with the Special Committee, and legal advisors to SC Fuels continued to negotiate the Revised LOI from November 29, 2009 to December 4, 2009. The Revised LOI was not executed but served as a basis for the terms of the Merger Agreement.

On December 7, 2009, legal advisors to SC Fuels sent Fulbright a draft Merger Agreement. On December 8, 2009, Matrix was provided with the initial draft of the Merger Agreement. On December 8, 2009, Company Counsel provided its comments to the draft Merger Agreement to Fulbright. On December 9, 2009, Fulbright provided its comments to the Merger Agreement, incorporating the comments from Company Counsel, to the legal advisors of SC Fuels. Throughout this time, Company Counsel continued to work on the Company Disclosure Letter, as required by the Merger Agreement.

On December 10, 2009, Matrix advised the Special Committee that it would not provide a finalized fairness opinion until the terms of the Merger Agreement were finalized. Matrix provided to the Special Committee a report ("**Final Matrix Report**") that it proposed to discuss in the meeting with the Board on December 15, 2009.

On December 10, 2009, legal advisors to SC Fuels sent a revised draft of the Merger Agreement to Fulbright and Company Counsel. Company Counsel provided its comments on December 10, 2009, and Fulbright provided its comments on December 11, 2009. On that same date, the Company provided some information for the Company Disclosure Letter. Fulbright, in consultation with the Special Committee, and legal advisors to SC Fuels continued to discuss outstanding issues under the Merger Agreement from December 11, 2009 to December 16, 2009.

On December 11, 2009, the Special Committee met with Fulbright to review the Merger Agreement. The Special Committee asked Fulbright several questions regarding the Merger Agreement and discussed the Merger Agreement extensively. The Special Committee approved

the current form of the Merger Agreement, with any necessary changes to be made in accordance with the instructions of the Special Committee. The Special Committee discussed the distribution of the Final Matrix Report to the Board and next steps. That same day, a draft of the Merger Agreement was distributed to the full Board for its review.

On December 12, 2009, the Special Committee Chairman distributed the Final Matrix Report to the Board.

On December 15, 2009, the Board held a meeting to consider the Proposed Transaction. The Special Committee Chairman gave the report of the Special Committee, in which the Special Committee Chairman explained the Special Committee's selection of its advisors, its review of the Preliminary Matrix Report and the negotiation process between the Special Committee and SC Fuels. The Special Committee Chairman then invited Matrix to present the Final Matrix Report. Matrix reviewed the Final Matrix Report and fielded questions from the Board.

The Special Committee Chairman discussed the Special Committee's consideration of alternatives to the Proposed Transaction. The Special Committee Chairman explained that the Special Committee considered the liquidation through bankruptcy of the Company as an alternative, but it concluded that, because of high levels of debt and corporate overhead carried by the Company, as well as the Company's deteriorating financial condition, any bankruptcy or similar reorganization of the Company would not produce any value for the Common Stock. Next, the Special Committee Chairman explained that the Special Committee determined that, considering the financial condition of the Company and the current interdependencies between SC Fuels and the Company, an alternate buyer for the Company or its businesses would be unlikely to emerge and would not be likely to produce any more value for the Common Stock than the Proposed Transaction. The Special Committee Chairman explained that the Special Committee had considered breaking up the Company and selling its businesses piecemeal; however, the Special Committee determined that this option was questionable given the interdependencies of SC Fuels and the Company and would require a lengthy process that the Company could not likely endure given the current pressure from the Company's lenders regarding repayment of the Company's debts. Furthermore, it was questionable whether the non-cardlock business of the Company would attract any buyers given the Company's heavy debt obligations and the liens on these assets. Finally, the Special Committee Chairman noted that, even under the best financial scenario considered by Matrix, the Common Stock did not have a positive value by the end of 2011, and it is questionable whether SC Fuels's financing and the existing financing from the Company's other lenders could sustain the Company through the end of 2011.

The Special Committee Chairman explained that, having considered various alternatives, the Special Committee decided that the Proposed Transaction had the potential to provide the most value for the Common Stock. The Special Committee Chairman explained that, in addition to the Preliminary Matrix Report, the Special Committee considered the Preferred-Based Valuation, what Offer Price would potentially attract the shareholders of the Company to tender their shares in the Offer, the value of the NOLs to SC Fuels and the value of the Proposed Transaction to SC Fuels versus the costs of bankruptcy to SC Fuels. The Special Committee Chairman discussed the details of its negotiations with SC Fuels, including the agreement of SC Fuels and the Special Committee to the Merger Conditions and an Offer Price of \$0.30 net cash

per Share. The Special Committee Chairman noted that Matrix is prepared to provide a fairness opinion stating that an Offer Price of \$0.30 net cash per Share is fair to the holders of the Common Stock, subject only to review of the final Merger Agreement to confirm its conformity to Matrix's understanding of the Proposed Transaction. Based upon the foregoing, and its review of the Merger Agreement, the Special Committee (1) concluded that the Merger Agreement and the transactions contemplated thereby were in the best interests of the Company and its shareholders; (2) recommended that the Board approve the Merger Agreement and the transactions contemplated thereby; and (3) recommended that the Board recommend to the shareholders of the Company that they tender their Shares and approve, if necessary, Merger Agreement and the transactions contemplated thereby.

Company Counsel reviewed the terms of the Merger Agreement and the transactions contemplated thereby with the Board. Company Counsel explained the three transactions contemplated by the Merger Agreement: (1) Acquisition Sub commences the Offer that is open for 35 days, and the closing of the Offer is conditioned on the Minimum Tender Condition; (2) Acquisition Sub may exercise the Top-Up Option if the Minimum Tender Condition has been met; and (3) a short-form merger of the Company into Acquisition Sub is consummated, which would convert the non-tendered Shares into the right to receive \$0.30 net cash per Share or the right to exercise dissenter's rights under Nevada law. In addition to the Merger Conditions discussed above, the consummation of the Offer is conditioned on: (1) no outstanding or threatened governmental order or decree or other legal proceeding enjoining the transactions contemplated by the Merger Agreement; (2) all Shares tendered are accepted for payment by Acquisition Sub; (3) all necessary shareholder approvals are obtained, which is not necessary if the Minimum Tender Condition is met, the Top-Up Option is exercised and a short-form merger is consummated as described above; and (4) SC Fuels has provided and prepaid the D&O Insurance for a period of three years following consummation of the Merger. Company Counsel explained that the Company may terminate the Merger Agreement, if, in the opinion of the Board, the Company receives an offer superior to the Proposed Transaction. Company Counsel also explained that both the Company and SC Fuels have the right to terminate the Merger Agreement under certain conditions and that, if the Merger Agreement is terminated by the Company under certain scenarios, including if SC Fuels terminates the Merger Agreement because the Special Committee changes its recommendation with respect thereto or if the Company receives a Superior Proposal and elects to terminate the Merger Agreement, SC Fuels is entitled to a termination fee of \$225,000. Company Counsel further explained that, under certain termination scenarios, the non-terminating party would be entitled to recoup its fees and expenses from the terminating party.

Company Counsel and Fulbright answered questions from the Board regarding the Merger Agreement. The Board, after extensive discussion and based upon the recommendation of the Special Committee, by the unanimous vote of the directors in attendance, with two directors abstaining: (1) concluded that the Merger Agreement and the transactions contemplated thereby were in the best interests of the Company and its shareholders; (2) approved the Merger Agreement and the transactions contemplated thereby; (3) recommended the Offer to the shareholders of the Company; and (4) recommended the Merger Agreement and the transactions contemplated thereby to the shareholders of the Company, if such recommendation became necessary.

On December 19, 2009, Mr. Greinke informed the Special Committee Chairman that Mr. Greinke had reached an agreement with certain minority shareholders, including Thomas Kelly, a director, regarding the purchase of Mr. Kelly's Shares and the Shares of certain other shareholders prior to the Offer (the "*Kelly Settlement*"). Mr. Kelly owns 4,006,000 Shares and the other shareholders involved own an aggregate of 2,154,913 Shares. Mr. Greinke asked that the Shares purchased in the Kelly Settlement be included in the number of Shares required to meet the Minimum Tender Condition, which would result in Acquisition Sub being required to purchase 1,657,123 Shares to fulfill the Minimum Tender Condition. The Special Committee Chairman consulted with Fulbright and agreed to consider the proposal after the necessary language was incorporated into the Merger Agreement.

On December 24, 2009, the Special Committee met to consider the Merger Agreement revised to reflect the Kelly Settlement. The Special Committee discussed the revised Merger Agreement. The Special Committee recommended to the Board that it approve the revised Merger Agreement.

On December 24, 2009, the Board met to consider the Merger Agreement revised to reflect the Kelly Settlement. The Special Committee Chairman reported that the Special Committee had met earlier that morning and reaffirmed its recommendation of the Merger Agreement. The Board discussed the revised Merger Agreement. Company Counsel answered questions from the Board pertaining to the revised Merger Agreement. By the unanimous vote of the directors in attendance, with Mr. Greinke abstaining and one director absent, the Board approved and adopted the revised Merger Agreement.

(c) *Reasons for the Recommendation of the Special Committee.*

In evaluating the Merger Agreement and the transactions contemplated thereby, including the Offer and the Merger, and making its recommendations to the Board, the Special Committee consulted with the Company's management, Fulbright and Matrix and considered a number of factors, including the following material factors which the Special Committee viewed as supporting its recommendation.

- *Financial Condition and Prospects of the Company.* The Special Committee considered the Company's current and historical financial condition, results of operations, business and prospects, particularly in light of the current and foreseeable conditions in the retail oil products market. The Special Committee considered the significant losses incurred by the Company, the current weak economy and the Company's competitive position with respect to its competitors. The Special Committee concluded that, due to the risks and uncertainties associated with the Company's operations and the weak economy, the Merger Agreement and the transactions contemplated thereby provided a better alternative to the Company's shareholders than continuing as an independent entity. The Special Committee also noted in this regard that it was questionable whether SC Fuels and the Company's other lenders would continue to finance the Company's operations and if such financing could sustain the Company for a significant period of time. The Special Committee also based this conclusion on the fact that, even under the best scenario

considered in the Preliminary Matrix Report, the Common Stock did not have a positive value in the foreseeable future.

- *Capital Resources of the Company.* The Special Committee considered the fact that the Company is in default under the Company's credit facility and further considered that there is no assurance that the Company would be able to obtain an additional period of forbearance with respect to such default or secure alternate financing on terms favorable to the Company, or at all. The Special Committee also noted that there is no assurance that SC Fuels will continue to provide the Company with financing. The Special Committee concluded that the Company could not operate its business in the absence of adequate financing.
- *Deteriorating Operations.* The Special Committee considered the Company's deteriorating sales and profitability, including the decrease in net sales, gross profits and operating income since 2007. The Special Committee further considered the potential that the deterioration of the Company's operations may continue for an indeterminate period.
- *Most Attractive Share Price Available At This Time.* The Special Committee explored other alternatives to maximize value for shareholders. The Special Committee considered the liquidation value to the Common Stock through a bankruptcy or other reorganization of the Company as an alternative, but it concluded that, because of high levels of debt and corporate overhead carried by the Company, as well as the Company's deteriorating financial condition, a bankruptcy or similar reorganization of the Company would not produce any value for the Common Stock. The Special Committee also determined that, considering the financial condition of the Company and the current interdependencies between SC Fuels and the Company, an alternate buyer for the Company or its businesses would be unlikely to emerge and would not be likely to produce a better value for the Common Stock than the Proposed Transaction. The Special Committee considered breaking up the Company and selling its businesses piecemeal; however, the Special Committee determined that this option was questionable given the interdependencies of SC Fuels and the Company and that this option would be a lengthy process that the Company could likely not endure given the current pressure from the Company's lenders regarding repayment of the Company's debts. Furthermore, it was questionable whether the non-cardlock business of the Company would attract any buyers given the Company's heavy debt obligations and the liens on these assets. Finally, the Special Committee considered a scenario in which the Company remained an independent public company. It concluded that, even under the best financial scenario considered by Matrix, the Common Stock did not have a positive value by the end of 2011 and that it is questionable whether SC Fuels's financing and the existing financing from the Company's other lenders could sustain the Company through the end of 2011. Overall, the Special Committee concluded that the Proposed Transaction presented the best option for the

Company and maximized value to the shareholders of the Company.

- *The Minimum Tender Condition.* The Special Committee considered the fact that the consummation of the Offer, the exercise of the Top-Up Option and the consummation of the Merger were conditioned upon Acquisition Sub purchasing a majority of the shares not held by SC Fuels, Acquisition Sub, Mr. Greinke or any of their affiliates, which is referred to herein as the Minimum Tender Condition. In other words, a majority of the holders of the Shares other than the Excluded Shares must express their implied approval of the Proposed Transaction by tendering their Shares in the Offer. The Special Committee believes that the Minimum Tender Condition will serve as a procedural safeguard for the holders of Shares other than the Excluded Shares as these holders constitute a minority of the shareholders of the Company.
- *Terms of Merger Agreement.* The Special Committee considered the terms of the Merger Agreement, including the respective representations, warranties, covenants and termination rights of the parties, as well as the termination fees and expense reimbursements payable by the Company under certain circumstances, and concluded that such terms, termination fees and expense reimbursements are, as a whole, as favorable as would be available to the Company in another strategic transaction.
- *Opinion of Matrix Capital Markets Group.* The Special Committee considered the financial analyses and report of Matrix delivered to the Special Committee on November 9, 2009 that, based upon and subject to the various assumptions made, matters considered and limitations set forth in the report, the consideration proposed to be received by the holders of Shares in connection with the Offer and the Merger pursuant to the Merger Agreement is fair from a financial point of view to such holders. For a further discussion of Matrix's opinion, see "Opinion of the Company's Financial Advisor" below. The Special Committee also considered the valuation of the Company in a restructuring report previously delivered to the Board by Stephens, Inc., an investment banking firm engaged by the Company at the direction of the Company's bank lending group in response to an event of default in May 2009 under the Company's revolving line of credit.
- *Historical Trading Prices; Premium to Market Price.* The Special Committee considered the current and historical market prices of the Shares, noting that the Company's Common Stock has traded at or around \$0.15 per Share for several months, and the fact that the Offer Price of \$0.30 net cash per Share represented an approximate 100% premium above the closing price of the Company's Common Stock on December 10, 2009, the last full trading day prior to the meeting of the Special Committee voting to recommend the Merger, the Offer and the other transactions contemplated by the Merger Agreement to the Board. Subsequent to such Special Committee meeting, and prior to the meeting of the Board approving the Merger, the Offer and the other transactions contemplated

by the Merger Agreement, the Company's Common Stock continued to trade at or around \$0.15.

- *Cash Tender Offer; Certainty of Value.* The Special Committee considered the fact that the form of consideration to be paid to holders of Shares in the Offer and the Merger would be cash, thereby providing the Company's shareholders with the certainty of the value of their consideration and the ability to realize immediate value for their Shares.
- *Timing of Completion.* The Special Committee considered the anticipated timing of consummation of the transactions contemplated by the Merger Agreement and the structure of the transaction as a tender offer for all Shares, which should allow shareholders to receive the transaction consideration in a relatively short time, followed by the Merger, in which remaining shareholders, if any, would receive the same consideration that as received by shareholders who tendered their Shares in the Offer unless such remaining shareholders opted to exercise their dissenters' rights under Nevada law.
- *Top-Up Option.* The Special Committee considered that Acquisition Sub would be granted the Top-Up Option to purchase from the Company at a price per Share equal to the Offer Price that number of authorized and unissued Shares equal to the number of Shares that, when added to the number of Shares owned by Acquisition Sub at the time of such exercise, constitutes greater than 90% of the then outstanding Shares (taking into account the issuance of Shares pursuant to the Top-Up Option), and that this could permit Purchaser to consummate the Merger more quickly as a short-form merger under Nevada law. The Special Committee noted that the exercise of the Top-Up Option by Acquisition Sub is conditioned on the prior fulfillment of the Minimum Tender Condition by the Company.
- *Ability to Respond to Certain Unsolicited Takeover Proposals.* The Special Committee considered the Company's ability under certain circumstances to engage in negotiations or discussions with, and to provide information to, any third party that, after the date of the Merger Agreement, has made a bona fide "Company Takeover Proposal" (as defined in the Merger Agreement) that the Special Committee determines in good faith (after consultation with its financial advisor and counsel) is reasonably expected to lead to a Superior Proposal (as defined in the Merger Agreement).
- *Ability of Board and Special Committee to Change Recommendation.* The Special Committee considered the ability of the Board to change its recommendation with respect to the Offer, the Merger and the other transactions contemplated by the Merger Agreement if it believes that such change is advisable in order to comply with its fiduciary duties the Company's shareholders. The Special Committee also considered its own ability to change its recommendation with respect to the Offer, the Merger and the other

transactions contemplated by the Merger Agreement if at any time the Special Committee determines that the Offer, the Merger, the Merger Agreement and the other transactions contemplated thereby are no longer in the best interests of the Company, in the best interests of all of the shareholders of the Company or in the best interests of those shareholders who are not affiliates of SC Fuels, Acquisition Sub, or Mr. Greinke. The Special Committee further considered the ability of the Company to terminate the Merger Agreement if the Company receives a Superior Proposal and certain conditions are satisfied.

- *Termination Fee.* The Special Committee determined that the termination fee of \$225,000, which could become payable to Acquisition Sub pursuant to the Merger Agreement under certain circumstances, is unlikely to be a significant deterrent to competing Company Takeover Proposals. Such circumstances include if the Company terminates the Merger Agreement to accept a Superior Proposal, if SC Fuels terminates the Merger Agreement because the Special Committee changes its recommendation with respect to the Merger or the Merger Agreement or if the Special Committee causes the Board to change its recommendation with respect to the Offer, the Merger, the Merger Agreement or the other transaction contemplated thereby.
- *Dissenters' Rights.* The Special Committee considered the availability of dissenters' rights with respect to the Merger for the Company's shareholders who properly exercise their rights under Nevada law, which would give the Company's shareholders the ability to dispute that the merger consideration (equal to the Offer Price) is the "fair value" of their Shares at the completion of the Merger.

(d) *Reasons Against the Recommendation.*

Further, the Special Committee consulted with the Company's management, Fulbright and Matrix and considered the following potentially negative factors in its evaluation:

- *Failure to Close.* The Special Committee considered that the conditions to SC Fuels's and Acquisition Sub's obligation to accept for payment and pay for the Shares tendered pursuant to the Offer and to consummate the Merger were subject to conditions, and the possibility that such conditions may not be satisfied, including as a result of events beyond the Company's control. For example, SC Fuels and Acquisition Sub are not obligated to close the transactions contemplated by the Merger Agreement if the Company has suffered a material adverse effect, if the Minimum Tender Condition is not met or if a legal proceeding enjoining the transactions contemplated by the Merger Agreement exists. The Special Committee also considered the fact that, if the Offer and the Merger are not consummated, the Company's directors, officers and other employees will have expended extensive time and effort and the Company will have incurred significant transaction costs in attempting to consummate the transaction, which otherwise would not have been expended or incurred.

- *Pre-Closing Covenants.* The Special Committee considered that, under the terms of the Merger Agreement, during the period prior to the closing of the Merger, the Company's operations will be restricted in certain respects, including the obligation that the Company not take certain actions related to the conduct of its business outside of the ordinary course without the prior written consent of SC Fuels.
- *Restrictions; Termination Fee; Expenses.* The Special Committee considered the restrictions that the Merger Agreement imposes on actively soliciting competing bids after its execution, and the requirement under the Merger Agreement that the Company would be obligated to pay a termination fee of \$225,000 under certain circumstances. The Special Committee considered that the termination fee may deter other potential acquirers from proposing alternative transactions. The Special Committee also considered that the Merger Agreement provides for the reimbursement under certain circumstances of SC Fuels's and Acquisition Sub's documented out-of-pocket expenses, in an amount not in excess of \$100,000.
- *Cash Consideration.* The Special Committee considered the fact that, subsequent to completion of the Merger, the Company will no longer exist as an independent company and that the nature of the transaction as a cash transaction would prevent the Company shareholders from participating in any value creation that the Company may generate in the future.
- *Potential Conflicts of Interest.* The Special Committee was aware of the potential conflicts of interest between the Company, on the one hand, and certain of the Company's officers and directors, on the other hand, as a result of the transactions contemplated by the Offer, the Merger and the Merger Agreement, as described in Paragraph III above.
- *Assets of SC Fuels and Acquisition Sub.* The Special Committee considered the fact that SC Fuels and Acquisition Sub may not have sufficient assets to satisfy their obligations under the terms of the Merger Agreement, and the Company's only recourse would be to file a legal or other proceeding to enforce the terms of the Merger Agreement.
- *Acquisition Sub's Termination Right if the Minimum Tender Condition is not Satisfied.* The Special Committee considered Acquisition Sub's right to decline to accept for payment or to pay for, and SC Fuels's right to decline to cause Acquisition Sub to accept for payment or to pay for, any Shares tendered pursuant to the Offer in the event that Acquisition Sub does not satisfy the Minimum Tender Condition, i.e. that Acquisition Sub must obtain a majority of the shares other than the Excluded Shares through the tender process as a condition to the consummation of the Offer, the exercise of the Top-Up Option and the consummation of the Merger.

**The Special Committee believed that, overall, the potential benefits of the Offer, the Merger and the other transactions contemplated by the Merger Agreement to the Company shareholders outweigh the risks of the Offer, the Merger and the other transactions contemplated by the Merger Agreement and provide the maximum value to shareholders.**

The full Board considered the same factors discussed above and considered by the Special Committee. The Board also considered the Final Matrix Report, the recommendation of the Offer, the Merger and the other transactions contemplated by the Merger Agreement to the Board by the Special Committee and the Special Committee's overall process and negotiations with SC Fuels and its representatives.

**The Board believed that, overall, the potential benefits of the Offer, the Merger and the other transactions contemplated by the Merger Agreement to the Company shareholders outweigh the risks of the Offer, the Merger and the other transactions contemplated by the Merger Agreement and provide the maximum value to shareholders. The Board accepted the recommendation of the Special Committee and hereby recommends that the shareholders of the Company tender their Shares in the Offer, and, if necessary, vote to approve the Merger and the other transactions contemplated by the Merger Agreement.**

The foregoing discussion of information and factors considered by the Special Committee and the Board is not intended to be exhaustive. In the light of the variety of factors considered in connection with its evaluation of the Offer, the Merger and the other transactions contemplated by the Merger Agreement, both the Board and the Special Committee did not find it practicable to quantify or otherwise assign relative weights to the specific factors considered in reaching its determinations and recommendations. Moreover, each member of the Special Committee and each member of the Board applied his own personal business judgment to the process and may have given different weight to different factors.

*(e) Opinion of the Company's Financial Advisor.*

Pursuant to an engagement letter, dated October 22, 2009, between Matrix and the Special Committee, the Special Committee engaged Matrix to act as its financial advisor with respect to the Proposed Transaction or a similar transaction involving the Company. As part of its services to the Special Committee, Matrix would estimate the fair value of 100% of the Common Stock, provide a summary valuation report to the Special Committee (referred to above and below as the "**Preliminary Matrix Report**") regarding Matrix's estimation of the fair value of 100% of the Common Stock and, after the Special Committee negotiated the Merger Agreement and the transactions contemplated thereby with SC Fuels, render to the Special Committee (and to the Board, if so requested by the Special Committee) a written opinion as to the fairness, from a financial point of view, to the shareholders of the Company of the consideration to be received in the Offer and the Merger. The engagement letter further provided that Matrix's compensation was not contingent on the conclusions reached in Matrix's written opinion.

At a meeting of the Special Committee held on November 9, 2009, Matrix delivered the Preliminary Matrix Report to the Special Committee and answered questions regarding the Preliminary Matrix Report posed by the Special Committee. Following the November 9, 2009 meeting, Matrix continued to advise the Special Committee regarding financial matters related to the Proposed Transaction.

At the request of the Special Committee, Matrix prepared and delivered a summary of the Preliminary Matrix Report (referred to above and below as the “*Final Matrix Report*”) to the Special Committee in advance of the meeting of the full Board on December 15, 2009. The Special Committee distributed the Final Matrix Report to the full Board on December 13, 2009. Matrix presented the Final Matrix Report at the Board meeting on December 15, 2009, along with its initial opinion, contingent on the finalization of the Merger Agreement and other documentation, that the Proposed Transaction is fair to the shareholders of the Company. Matrix subsequently delivered its final opinion regarding the fairness of the Proposed Transaction to the Board on December 29, 2009 to the effect that, based upon the information regarding the Company reviewed by Matrix and based upon and subject to various assumptions, matters considered and limitations set forth in such opinion, the consideration proposed to be received by the holders of Shares in connection with the Offer, the Merger and the other transactions contemplated by the Merger Agreement was fair from a financial point of view to the holders of Common Stock.

The full text of Matrix’s opinion, dated December 29, 2009, which sets forth assumptions made, procedures followed, matters considered, limitations on and scope of the review undertaken by Matrix in rendering its opinion, is attached as Annex C. **Matrix’s opinion was directed only to the fairness, from a financial point of view, to the holders of shares of Common Stock of the consideration proposed to be received by the holders of shares of Common Stock in connection with the Offer, the Merger and the other transactions contemplated by the Merger Agreement, was provided to the Board in connection with its evaluation of the Offer, the Merger and the other transactions contemplated by the Merger Agreement, did not address any other aspect of the Offer, the Merger or the other transactions contemplated by the Merger Agreement and did not, and does not, constitute a recommendation to any holder of shares of Common Stock or any other person as to whether such holder should accept the Offer or how such holder or person should vote or act on any matter relating to any part of the Offer, the Merger and the other transactions contemplated by the Merger Agreement. The summary of Matrix’s opinion set forth in these materials is qualified in its entirety by reference to the full text of such opinion, which is incorporated herein by reference. Holders of shares of Common Stock are encouraged to read Matrix’s opinion carefully and in its entirety.**

In connection with Matrix’s opinion, Matrix:

- reviewed certain publicly-available financial statements and other information of the Company;
- reviewed certain internal financial statements and other financial and operating

data concerning the Company prepared by the management of the Company;

- reviewed certain financial projections for the Company prepared by the management of the Company;
- discussed the past and current operations, financial condition and prospects of the Company with management of the Company;
- reviewed the reported prices and trading activity of shares of Common Stock;
- compared the financial performance and condition of the Company and the reported prices and trading activity of shares of Common Stock with those publicly available of certain other publicly traded companies that Matrix considered relevant;
- reviewed publicly available information regarding the financial terms of certain transactions that Matrix considered relevant, in whole or in part, to evaluating the Offer, the Merger and the other transactions contemplated by the Merger Agreement;
- reviewed limited real estate data, equipment appraisal and environmental information of the Company;
- reviewed shareholder ownership schedules compiled by management;
- reviewed industry research reports for the retail fuel industry and the filings with the U.S. Securities and Exchange Commission of other public companies that Matrix considered relevant;
- reviewed the LOI;
- reviewed a copy of the Merger Agreement; and
- performed such other analyses, and considered such other information and financial, economic and market criteria, as Matrix deemed appropriate.

Matrix expressed no recommendation as to, and its opinion does not address, the underlying business decision of the Company to accept the Offer and effect the Merger and the other transactions contemplated by the Merger Agreement, the relative merits of the Offer, the Merger and the other transactions contemplated by the Merger Agreement as compared to any alternative business strategies that might exist for the Company or the effect of any other transaction in which the Company might engage. Further, Matrix expressed no opinion as to the prices at which shares of Common Stock may trade at any time. In addition, Matrix expressed no view as to, and its opinion does not address, solvency of the Company or lack thereof, or the

impact of the Offer, the Merger or the other transactions contemplated by the Merger Agreement or related financings on solvency.

The following summarizes the material financial analyses performed by Matrix and reviewed first with the Special Committee on November 9, 2009 and then with the Board on December 15, 2009 in connection with the delivery of Matrix's opinion.

#### *Analysis of Selected Publicly-Traded Guideline Companies*

Using publicly-available information, Matrix performed a comparable companies analysis to determine (1) what Company valuation would be if shares of the Common Stock traded in the valuation range of certain comparable petroleum marketing and distribution companies and (2) what Company valuation would be if shares of the Common Stock traded in such range and were to receive a premium to this valuation consistent with premiums in cash acquisitions received by other publicly-traded companies operating in the petroleum marketing and distribution industry since November 2, 2000. Matrix reviewed and compared selected financial data of the Company with similar data using publicly-available information for the following publicly-traded guideline companies in the petroleum marketing and distribution industry, which have operations that, for purposes of Matrix's analysis, Matrix deemed similar to operations of the Company based on Matrix's experience:

World Fuel Services Corp. (NYSE: INT)  
SMF Energy Corporation (NasdaqCM: FUELD)

For each of these companies, Matrix calculated and compared various historical and projected financial multiples and ratios, including, among others:

- (1) Enterprise Value (which represents total equity value plus book values of total debt, preferred stock and minority interests) as a multiple of each of:
  - o Earnings Before Interest and Taxes (which is commonly referred to as "**EBIT**"), and Earnings Before Interest, Taxes, Depreciation and Amortization (which is commonly referred to as "**EBITDA**"), for the selected companies, for the prior two fiscal years and the last twelve months (which is commonly referred to as "**LTM**"), for the most recently available quarterly information as of June 30, 2009. Projected EBIT and EBITDA for fiscal year 2010 were also considered. Adjustments to the guidelines companies' EBITDA and EBIT were made for nonrecurring and extraordinary items.
- (2) Stock price per share as a multiple of earnings per share (which is commonly referred to as "**EPS**") for the same periods of time.

Based on this public company data, Matrix developed a summary valuation analysis based on a range of trading valuation multiples for the selected comparable companies. Because the Company has not reported positive net earnings per share of Common Stock since fiscal year 2006, Matrix focused its analysis on guideline companies' multiples of EBITDA and EBIT. This analysis resulted in the following ranges of implied multiples and ratios:

<b>Enterprise Value as a Ratio of:</b>	<b>Range of Implied Trading Multiples</b>
LTM EBITDA	5.1x — 6.9x
LTM EBIT	5.6x — 15.1x
Projected 2010 EBITDA	5.7x — 7.6x
Projected 2010 EBIT	6.2x — 8.3x

Matrix then calculated a range of implied enterprise value and equity values per share of Common Stock using the range of multiples and ratios from the selected companies and applying them to Company financial statistics. For this calculation, the Company's historical financial statistics were obtained from the Company's historical financial statements, and the Company's projected financial statistics, which were provided to Matrix by the Company management. The per share Common Stock values were based on the number of shares of Common Stock outstanding as of September 30, 2009.

#### *Analysis of Selected Precedent Transactions*

To analyze the proposed Offer Price and merger consideration per share of Common Stock pursuant to the Merger Agreement relative to the consideration received by shareholders in selected other similar precedent transactions, Matrix researched and analyzed selected precedent change of control transactions between publicly traded and privately-held companies in the petroleum marketing and distribution industry that, for purposes of Matrix's analysis, Matrix deemed similar to the Offer and the Merger based on Matrix's experience.

The list of transactions reviewed included (referred to below by the acquiror and target in the transaction, respectively):

- June 2008: World Fuel Energy Corp. acquired Texor Petroleum Company.
- April 2009: World Fuel Energy Corp. acquired TGS Petroleum.
- November 2009: TAC Energy, a division of Truman Arnold Companies, acquired Fuel Managers, Inc.

Disclosure of the financial details of the above transactions were very limited and Matrix could not develop or employ valuation multiples to apply to the Company's financials.

#### *Discounted Cash Flow Analysis*

Matrix performed a discounted cash flow ("**DCF**") analysis to calculate theoretical per share of Common Stock value based on the value of the forecasted future net free cash flows of

the Company, as estimated and provided by Company management for the last quarter of fiscal year 2009 through fiscal year 2011. This period was selected based on Matrix's estimation that it could take the Company until the last quarter of 2011 to complete a liquidity or recapitalization transaction.

In performing its discounted cash flow analysis, Matrix considered various assumptions that it deemed appropriate based on a review with Company management of the Company's prospects and risks. Matrix tested management's primary operating and balance sheet assumptions and developed three projection scenarios to support the DCF method. Matrix believed it appropriate to utilize weighted average costs of capital ("WACC") ranging from 17.3% to 19.1%. Matrix determined to use these WACCs because they reflected the range of cash flow risk and return for the Company relative to the WACCs of other companies deemed comparable to the Company by Matrix in its professional judgment.

#### *Reconciliation of Valuation Analyses*

Based on the analysis of similar publicly-traded guideline companies and the discounted cash flow scenarios, Matrix derived a per share of Common Stock implied value reference range of (\$0.72) to (\$2.14), before consideration of control premiums. The Company's enterprise value was positive in certain projection scenarios; however, per share of Common Stock value was negative after deducting the amount of interest-bearing debt and the conversion value of the preferred debt outstanding as of September 30, 2009.

Matrix relied on Mergerstat® control premium studies of select companies operating in the petroleum marketing and distribution industry (SIC 5172) that were acquired since November 2, 2000. The range of control premiums was 9.1% to 53.8%. Matrix noted that the proposed Offer Price and merger consideration per share of Common Stock pursuant to the Merger Agreement was \$0.30. The Offer Price is a significant premium to the high end of the implied equity value range (which is negative and, accordingly, a percentage premium cannot be calculated) and a 150% premium to the Company's closing Common Stock share price of \$0.12 at December 14, 2009.

#### *Miscellaneous*

Matrix assumed and relied upon the accuracy and completeness of the information reviewed by Matrix for the purposes of Matrix's opinion and did not assume any responsibility for independent verification of such information. With respect to the financial projections, Matrix assumed that the financial projections were reasonably prepared on bases reflecting the best currently available estimates and judgments of the Company's management as to the future financial performance of the Company. Matrix did not assume any responsibility for any independent valuation or appraisal of the assets or liabilities of the Company, nor was Matrix furnished with any such valuation or appraisal, with the exception of appraisals of select equipment. Matrix's opinion is necessarily based on economic, market and other conditions as in effect on, and the information made available to Matrix as of September 30, 2009. Matrix has no obligation to update its opinion to take into account events occurring, or information that may become known to Matrix, after the time that Matrix's opinion was delivered to the Board.

Matrix assumed that all representations and warranties set forth in the Merger Agreement are and will be true and correct as of all of the dates made or deemed made, that all parties to the Merger Agreement will comply with all covenants of such party thereunder, that the Offer and the Merger will be consummated in accordance with their respective terms, without waiver, modification or amendment of any material term, condition or agreement, that, in the course of obtaining the necessary regulatory or third-party approvals, consents and releases for the Offer and the Merger, no delay, limitation, restriction or condition will be imposed that would have an adverse effect on the Company or the Offer and the Merger, and that Parent has funds available to it or can obtain financing sufficient to effect the Offer and the Merger. Matrix is not a legal, tax or regulatory advisor and Matrix relied upon, without independent verification, the assessments of the Company and its legal, tax and regulatory advisors with respect to such matters.

In arriving at its opinion, Matrix performed a variety of financial analyses, the material portions of which are summarized above. The preparation of a fairness opinion is a complex process involving various determinations as to the most appropriate and relevant methods of financial analysis and the application of those methods to the particular circumstances and, therefore, such an opinion is not necessarily susceptible to a partial analysis or summary description. In arriving at its opinion, Matrix did not attribute any particular weight to any analysis or factor considered by it, but rather made qualitative judgments as to significance and relevance of each analysis and factor. Accordingly, Matrix believes that its analyses must be considered as a whole and that selecting portions of its analyses or of the summary set forth above, without considering all such analyses, could create an incomplete view of the process underlying Matrix's opinion.

In performing its analyses, Matrix relied on numerous assumptions made by the management of the Company and made numerous judgments of its own with regard to current and future industry performance, general business, economic, market and financial conditions and other matters, many of which are beyond the control of the Company. Actual values will depend upon several factors, including changes in interest rates, dividend rates, market conditions, general economic conditions and other factors that generally influence the price of securities. The analyses performed by Matrix are not necessarily indicative of actual values or future results, which may be significantly more or less favorable than suggested by such analyses. Such analyses were prepared solely as a part of Matrix's analysis of the fairness, from a financial point of view, to the holders of Shares of the consideration proposed to be received by the holders of such Shares in connection with the Offer or the Merger pursuant to the Merger Agreement, and were provided to the Board solely in connection with the delivery of Matrix's opinion. The analyses do not purport to be appraisals or necessarily reflect the prices at which businesses or securities might actually be sold, which may be higher or lower than the consideration proposed to be received by the holders of Shares in connection with the Offer or the Merger pursuant to the Merger Agreement, and which are inherently subject to uncertainty. Because such analyses are inherently subject to uncertainty, Matrix does not assume responsibility for their accuracy.

With regard to the comparable public company analysis and the precedent transactions analysis summarized above, Matrix selected such public companies on the basis of various factors for reference purposes only; however, no public company or transaction utilized as a comparison is identical to the Company or the Offer or the Merger. Accordingly, an analysis of the foregoing was not mathematical; rather, it involved complex considerations and judgments concerning differences in financial and operating characteristics of the selected companies and other factors that could affect the acquisition or public trading values of the selected companies and transactions to which the Company and the Offer and the Merger were being compared. The consideration proposed to be received by the holders of Shares in connection with the Offer and the Merger pursuant to the Merger Agreement was determined through negotiations between Parent and the Special Committee, and was approved by both the Special Committee and the Board. Matrix did not recommend any specific consideration to the Special Committee or the Board or that any given consideration constituted the only appropriate consideration for the Offer and the Merger. In addition, as described elsewhere in this Statement, Matrix's opinion was one of many factors taken into consideration by the Special Committee and by the Board in evaluating the Offer and the Merger. Consequently, the Matrix analyses described above should not be viewed as determinative of the opinions of the Special Committee and the Board with respect to the Offer and the Merger.

The financial advisory services Matrix provided to the Special Committee in connection with the Offer and the Merger were limited to the delivery of its opinion, and Matrix's compensation was not contingent on the conclusions reached in Matrix's written opinion. In addition, the Company has also agreed to reimburse Matrix for its out-of-pocket expenses, including fees and disbursements of its counsel, incurred in connection with its engagement and to indemnify Matrix and certain related persons against liabilities and expenses, including liabilities under the federal securities laws, relating to or arising out of its engagement.

(f) *Intent to Tender.*

To the knowledge of the Company, to the extent permitted by applicable securities laws, rules or regulations, including Section 16(b) of the Exchange Act, the following executive officers, directors, affiliates and subsidiaries of the Company currently intend to tender all Shares over which he, she or it has sole dispositive power: Mr. Greinke, the Greinke Trust, SC Fuels, Acquisition Sub, Mr. Dewhurst, Mr. Tutor, Mr. Bechtel, Mr. Pester, and Mr. Juliano.

**V. Persons/Assets Retained, Employed, Compensated or Used.**

The Special Committee has retained Matrix as its financial advisor in connection with the Special Committee's analysis and consideration of, and response to, the Proposed Transaction and the Offer. Under Matrix's engagement letter with the Special Committee (see Paragraph IV above of this Statement), Matrix is entitled to a fee of \$125,000 for the fairness opinion upon the rendering thereof at the Special Committee's request, without regard to whether or not the Offer is consummated. The Company has also agreed to reimburse Matrix for its out-of-pocket expenses, including attorneys' fees, and has agreed to indemnify Matrix against certain liabilities, including liabilities under the federal securities laws. The terms of the fee arrangement

with Matrix, which are customary in transactions of this nature, were negotiated at arm's length between the Special Committee and Matrix.

The members of the Special Committee have been paid fees in connection with their services relating to the negotiation of the Merger Agreement and the transactions contemplated thereby. For additional information regarding such fees, see the subsection entitled "Director Compensation" in Paragraph III above of this Statement.

Except as set forth above in this Paragraph V, neither the Company nor any person acting on its behalf currently intends to employ, retain or compensate any person to make solicitations or recommendations on the Company's behalf in connection with the Offer or any of the transactions contemplated by the Merger Agreement.

#### **VI. Interest in Securities of the Subject Company.**

To the Company's knowledge and belief, on December 18, 2009, SC Fuels entered into a stock purchase agreement with Mr. Kelly and certain other shareholders to purchase an aggregate of 6,160,913 shares of Common Stock at a price of \$.30 per share.

Other than as set forth in this Statement, no transactions in shares of Common Stock have been effected during the past 60 days by the Company or, to the knowledge of the Company, by any executive officer, director, affiliate or subsidiary of the Company.

#### **VII. Purposes of the Transaction and Plans or Proposals.**

Other than as set forth in this Statement, no negotiation is being undertaken or engaged in by the Company in response to the Offer that relates to (1) a tender offer for or other acquisition of the Company's securities by the Company, any subsidiary of the Company or any other person; (2) an extraordinary transaction, such as a merger, reorganization or liquidation, involving the Company or any subsidiary of the Company; (3) a purchase, sale or transfer of a material amount of assets of the Company or any subsidiary of the Company; (4) any material change in the present dividend rate or policy of the Company; or (5) any material change in the present indebtedness or capitalization of the Company.

Other than as set forth in this Statement, there are no transactions, Board resolutions, agreements in principle or signed contracts entered into in response to the Offer which relate to, or would result in, one or more of the matters referred to in this Paragraph VII.

#### **VIII. Additional Information.**

##### *Appraisal Rights*

Holders of the Shares do not have appraisal rights in connection with the Offer. However, if Acquisition Sub purchases Shares in the Offer and a subsequent merger (including a short-form merger) involving the Company is consummated, holders of the shares of Common Stock immediately prior to the effective time of the merger will have certain rights under the provisions of Sections 92A.300 through 92A.500 of the Nevada Revised Statutes ("**NRS**"), including the right to dissent from the merger and demand appraisal of, and to receive payment

in cash for the fair value of, their Shares. Dissenting shareholders who comply with the applicable statutory procedures will be entitled to receive a judicial determination of the fair value of their Shares and to receive payment of such fair value in cash. The value so determined could be more or less than the price per Shares to be paid in the Offer and the Merger.

The foregoing summary of the rights of shareholders seeking appraisal rights under Nevada law does not purport to be a complete statement of the procedures to be followed by shareholders desiring to exercise any appraisal rights available thereunder and is qualified in its entirety by reference to Sections 92A.300 through 92A.500 of the NRS. The perfection of appraisal rights requires strict adherence to the applicable provisions of the NRS. If a shareholder withdraws or loses his right to appraisal, such shareholder will only be entitled to receive the price per share of Common Stock to be paid in the Merger, without interest.

UNITED FUEL & ENERGY CORPORATION

By: /s/ Joseph Juliano

Joseph Juliano

President and Chief Operating Officer

**APPENDIX A**  
**MERGER AGREEMENT**

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**AGREEMENT AND PLAN OF MERGER**

**BY AND AMONG**

**SOUTHERN COUNTIES OIL CO.,  
A CALIFORNIA LIMITED PARTNERSHIP,**

**GOLDSTREAM, INC.,  
a Nevada corporation**

**AND**

**UNITED FUEL & ENERGY CORPORATION,  
a Nevada corporation**

**DATED AS OF DECEMBER 24, 2009**

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## **AGREEMENT AND PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER (this “Agreement”), dated as of December 24, 2009, is by and among SOUTHERN COUNTIES OIL CO., a California Limited Partnership (“Parent”), GOLDSTREAM, INC., a Nevada corporation and a direct, wholly-owned Subsidiary of Parent (“Merger Sub”), and UNITED FUEL & ENERGY CORPORATION, a Nevada corporation (the “Company”).

### **W I T N E S S E T H:**

WHEREAS, Parent desires to acquire the Company on the terms and subject to the conditions set forth in this Agreement;

WHEREAS, in furtherance of the acquisition of the Company by Parent, Parent proposes to cause Merger Sub to commence an offer to purchase all of the outstanding shares of common stock, par value \$0.001 per share, of the Company (“Company Common Stock”);

WHEREAS, it is proposed that, on the terms and subject to the conditions set forth in this Agreement, following the consummation of the Offer (defined below) and the satisfaction of the Minimum Tender Condition (defined below), the Company shall, in accordance with Chapter 92A of the Nevada Revised Statutes (such statutes are collectively referred to as the “NRS”), merge with and into Merger Sub (the “Merger”); and

WHEREAS, the board of directors of the Company (the “Company Board”) appointed a special committee of the Company Board pursuant to resolutions dated October 6, 2009 (the “Special Committee”) to consider the advisability and fairness of the terms and conditions of the Offer and the Merger.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements contained in this Agreement and intending to be legally bound hereby, the parties hereto agree as follows:

### **ARTICLE I** **THE OFFER**

#### **1.1 The Offer.**

(a) Subject to the conditions of this Agreement, as promptly as practicable (but in no event later than ten (10) business days) after the date of this Agreement, Merger Sub shall, and Parent shall cause Merger Sub to, commence an offer (as it may be amended from time to time as permitted under this Agreement, the “Offer”) to purchase all of the outstanding shares of Company Common Stock at a price per share of Company Common Stock of \$0.30, net to the selling stockholder in cash, without interest (the “Offer Price”). The obligations of Merger Sub to, and of Parent to cause Merger Sub to, accept for payment, and pay for, any shares of Company Common Stock tendered pursuant to the Offer are subject only to the conditions set forth in Exhibit A (as they may be amended in accordance with this Agreement, the “Offer Conditions”).

(i) The initial expiration date of the Offer shall be midnight, Eastern Standard Time, no earlier than the 20th business day following the commencement of the Offer. Merger Sub expressly reserves the right, at any time, to, in its sole discretion, waive, in whole or in part, any Offer Condition or modify the terms of the Offer; provided, however, that, without the prior written consent of the Company, acting at the direction of the Special Committee, Merger Sub shall not (i) reduce the number of shares of Company Common Stock subject to the Offer, (ii) reduce the Offer Price or change the form of consideration payable in the Offer, (iii) change, modify or waive the Minimum Tender Condition, (iv) add to the Offer Conditions, or (v) otherwise amend the Offer in any manner adverse to the holders of shares of Company Common Stock.

(ii) Notwithstanding anything in this Agreement to the contrary, Merger Sub may, in its sole discretion, without the consent of the Company, extend the Offer on one or more occasions for any period, if on any then-scheduled expiration date of the Offer any of the Offer Conditions shall not be satisfied or, in Merger Sub's sole discretion (subject to Section 1.1(a)(i) above), waived (if waiveable by Merger Sub), until such time as such condition or conditions are satisfied or validly waived; provided, however, that in no event shall Merger Sub be required to extend the Offer (1) beyond the Outside Date or (2) at any time that Parent or Merger Sub is permitted to terminate this Agreement pursuant to Article VIII.

(iii) On the terms and subject to the conditions of this Agreement (including but not limited to the Offer Conditions), Merger Sub shall, and Parent shall cause Merger Sub to, accept and pay for (subject to any withholding of tax pursuant to Section 1.1(d)) all shares of Company Common Stock validly tendered and not validly withdrawn pursuant to the Offer as soon as practicable after the expiration date of the Offer (as it may be extended and re-extended in accordance with this Section 1.1(a)). Acceptance for payment of shares of Company Common Stock pursuant to and subject to the conditions of the Offer upon the expiration of the Offer is referred to in this Agreement as the "Offer Closing," and the date on which the Offer Closing occurs is referred to in this Agreement as the "Offer Closing Date." Merger Sub expressly reserves the right to, in its sole discretion, following the Offer Closing, extend the Offer for a "subsequent offering period" in accordance with the Offer Documents and may, in Merger Sub's sole discretion, provide for such a reservation of right. Nothing contained in this Section 1.1(a) shall affect any termination rights in Article VIII.

(b) On the date of commencement of the Offer, Parent and Merger Sub shall prepare an offer to purchase and a related letter of transmittal and summary advertisement and other appropriate ancillary offer documents (such documents pursuant to which the Offer will be made, together with any supplements or amendments thereto, the "Offer Documents"), and cause the Offer Documents to be disseminated to the stockholders of the Company. Each of Parent, Merger Sub and the Company shall promptly correct any information supplied by it for inclusion or incorporation by reference in the Offer Documents if and to the extent that such information shall have

become false or misleading in any material respect, and each of Parent and Merger Sub shall take all steps necessary to amend or supplement the Offer Documents and to cause the Offer Documents as so amended or supplemented to be disseminated to the stockholders of the Company, in each case as soon as reasonably practicable. In the event that Parent or Merger Sub receives any comments from any state or federal governmental or administrative body with respect to the Offer Documents, each shall use commercially reasonable efforts to (i) respond promptly to such comments and (ii) take all other actions necessary to resolve the issues raised therein.

(c) Parent shall provide or cause to be provided to Merger Sub on a timely basis the consideration necessary to pay for any shares of Company Common Stock that Merger Sub becomes obligated to accept for payment, and pay for, pursuant to the Offer and shall cause Merger Sub to fulfill all of Merger Sub's obligations under this Agreement.

(d) Parent, Merger Sub or the paying agent for the Offer (the "Paying Agent") shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to the Offer to any holder of shares of Company Common Stock such amounts as Parent, Merger Sub or the Paying Agent is required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code of 1986, as amended (the "Code"), and applicable Treasury Regulations issued pursuant thereto, or any provision of state, local or foreign tax Law. To the extent that amounts are so withheld and paid over by Parent, Merger Sub or the Paying Agent to the appropriate taxing authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the shares of Company Common Stock in respect of which such deduction and withholding was made by Parent, Merger Sub or the Paying Agent as partial payment of the Offer Price.

## 1.2 Company Actions.

(a) The Company shall prepare a solicitation/recommendation statement (the "Solicitation/Recommendation Statement") containing, subject to Section 6.3(b), a recommendation by the Company Board that the stockholders of the Company accept the Offer and, if required, approve the Merger, and shall mail the Solicitation/Recommendation Statement to the stockholders of the Company. Each of the Company, Parent and Merger Sub shall promptly correct any information supplied by it for inclusion or incorporation by reference in the Solicitation/Recommendation Statement if and to the extent that such information shall have become false or misleading in any material respect, and the Company shall take all steps necessary to amend or supplement the Solicitation/Recommendation Statement and to cause the Solicitation/Recommendation Statement as so amended or supplemented to be disseminated to the stockholders of the Company, in each case as soon as reasonably practicable. The Company shall promptly notify Parent upon the receipt of any comments from any state or federal governmental or administrative body, or any request from any state or federal governmental or administrative body, for amendments or supplements to the Solicitation/Recommendation Statement, and shall promptly provide Parent with copies of all correspondence and summaries of all material oral

communications between the Company and its Representatives, on the one hand, and any state or federal governmental or administrative body, on the other hand. Prior to the mailing of the Solicitation/Recommendation Statement to the stockholders of the Company, or responding to any comments of any state or federal governmental or administrative body with respect to the Solicitation/Recommendation Statement, the Company shall provide Parent and its counsel a reasonable opportunity to review and comment on such Solicitation/Recommendation Statement or response, and the Company shall give reasonable and good faith consideration to any comments made by Parent, Merger Sub and their counsel. The Company hereby consents to the inclusion in the Offer Documents of the recommendation of the Company Board contained in the Solicitation/Recommendation Statement. In the event that the Company receives any comments from any state or federal governmental or administrative body with respect to the Solicitation/Recommendation Statement, it shall use commercially reasonable efforts to (i) respond promptly to such comments and (ii) take all other actions necessary to resolve the issues raised therein.

(b) In connection with the Offer and the Merger, the Company shall cause its transfer agent to furnish Parent and Merger Sub promptly (and no later than the date hereof) with mailing labels containing the names and addresses of the record holders of Company Common Stock as of the latest practicable date and, promptly thereafter, of those persons becoming record holders subsequent to such date, together with copies of all lists of stockholders, security position listings and all other information in the Company's possession or control regarding the beneficial owners of Company Common Stock as Parent or Merger Sub shall reasonably request, and shall furnish to Parent and Merger Sub such information and assistance (including periodically updated lists of stockholders and security position listings) as Parent may reasonably request in communicating the Offer to holders of shares of Company Common Stock.

### 1.3 **Top-Up Option.**

(a) The Company hereby grants to Merger Sub an irrevocable option (the "Top-Up Option"), for so long as this Agreement has not been terminated pursuant to the provisions hereof, to purchase from the Company, subject to the conditions in this Agreement, a number of authorized and unissued shares of Company Common Stock (including as authorized and unissued shares, for purposes of this Section 1.3, any shares of Company Common Stock held in the treasury of the Company) equal to the number of shares that, when added to the number of shares owned by Merger Sub at the time of exercise of the Top-Up Option, constitutes one share more than the number of shares (the "Requisite Short-Form Merger Shares") entitled to cast 90% of all the votes entitled to be cast by the holders of outstanding shares of Company Common Stock on the Merger after the issuance of all shares to be issued upon exercise of the Top-Up Option, calculated on a fully-diluted basis or, if so elected by Merger Sub, on a primary basis as of immediately prior to the issuance of such shares (such shares to be issued upon exercise of the Top-Up Option, the "Top-Up Shares").

(b) The Top-Up Option may be exercised by Merger Sub, in whole but not in part, at any time following the Offer Closing and prior to the earlier to occur of (i) the

Effective Time and (ii) the termination of this Agreement in accordance with its terms; provided that the Minimum Tender Condition shall have been satisfied and not waived and the number of shares owned by Merger Sub is less than the Requisite Short-Form Merger Shares. Notwithstanding anything in this Agreement to the contrary, the Top-Up Option shall not be exercisable to the extent (i) the number of shares of Company Common Stock issuable upon exercise of the Top-Up Option would exceed the number of authorized but unissued shares of Company Common Stock that are not already reserved for issuance or (ii) any other provision of applicable Laws or judgment, injunction, order or decree shall prohibit the exercise of the Top-Up Option or the delivery of the Top-Up Shares. The aggregate purchase price payable for the Top-Up Shares being purchased by Merger Sub pursuant to the Top-Up Option shall be determined by multiplying the number of such Top-Up Shares by the Offer Price. Such aggregate purchase price may be paid by Merger Sub, at its election, either in cash or by executing and delivering to the Company a demand promissory note having a principal amount equal to such purchase price bearing interest at the prime lending rate as published in the Wall Street Journal (the "Prime Rate") in effect on the date such promissory note is made, per annum, payable quarterly in arrears, and in form reasonably acceptable to the Company.

(c) The parties hereto shall cooperate to ensure that the issuance and delivery of the Top-Up Shares comply with all applicable Laws, including compliance with an applicable exemption from registration of the Top-Up Shares under the Securities Act of 1933, as amended (the "Securities Act") and any applicable state securities laws. In the event Merger Sub wishes to exercise the Top-Up Option, Merger Sub shall give the Company at least three (3) business days prior written notice, specifying (i) the number of Top-Up Shares that Merger Sub intends to purchase pursuant to the Top-Up Option; (ii) the manner in which Merger Sub intends to pay the applicable purchase price; and (iii) the place and time for the closing of such purchase. At the closing of the purchase of the Top-Up Shares, Merger Sub shall cause to be delivered to the Company the consideration required to be delivered in exchange for the Top-Up Shares, and the Company shall cause to be issued to Merger Sub a certificate representing the Top-Up Shares.

(d) Parent and Merger Sub acknowledge that the Top-Up Shares that Merger Sub may acquire upon exercise of the Top-Up Option will not be registered under the Securities Act or any state securities laws, and will be issued in reliance upon an exemption therefrom for transactions not involving a public offering. Merger Sub hereby represents and warrants to the Company that the Top-Up Option and the Top-Up Shares to be acquired upon exercise of the Top-Up Option are being and will be acquired by Merger Sub for the purpose of investment and not with a view to, or for resale in connection with, any distribution thereof in violation of the Securities Act or any state securities laws. Any certificates evidencing the Top-Up Shares shall include any legends required by applicable securities laws.

(e) Prior to the exercise of the Top-Up Option, the Greinke Personal Living Trust ("Greinke Trust"), Frank P. Greinke ("Greinke"), Parent and its Subsidiaries shall

take all necessary and appropriate action to transfer to Merger Sub all shares of Company Common Stock held by Parent, any Subsidiary of Parent, Greinke or the Greinke Trust.

## ARTICLE II

### THE MERGER

2.1 **The Merger.** Upon the terms and subject to the conditions of this Agreement, and in accordance with the applicable provisions of the NRS, at the Effective Time, the Company shall be merged with and into Merger Sub. As a result of the Merger, the separate corporate existence of the Company shall cease and Merger Sub shall continue as the surviving entity following the Merger (sometimes referred to herein as the “Surviving Corporation”). The existence of Merger Sub shall continue unaffected and unimpaired by the Merger and, as the Surviving Corporation, it shall be governed by the NRS.

2.2 **Closing; Effective Time.**

(a) The closing of the Merger (the “Closing”) shall take place at 10:00 a.m., Pacific Standard Time, on a date to be specified by the parties, which shall be no later than the third (3<sup>rd</sup>) business day after the satisfaction or waiver of all of the conditions set forth in Article VII hereof (other than those conditions that by their nature are to be satisfied at the Closing, it being understood that the occurrence of the Closing shall remain subject to the satisfaction or waiver of such conditions at the Closing), at the offices of Rutan & Tucker, LLP, 611 Anton Boulevard, 14<sup>th</sup> Floor, Costa Mesa, California 92626, unless another time, date or place is agreed to in writing by the parties hereto. The date on which the Closing occurs is referred to herein as the “Closing Date.”

(b) Upon the terms and subject to the conditions of this Agreement, as soon as practicable on the Closing Date, the parties shall cause the Merger to be consummated by filing a certificate of merger (the “Certificate of Merger”) with the Secretary of State of the State of Nevada and by making all other filings or recordings required under the NRS. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of the State of Nevada, or at such subsequent date or time as Parent and the Company shall agree and specify in the Certificate of Merger. The time at which the Merger becomes effective is referred to herein as the “Effective Time.”

2.3 **Effect of the Merger.** At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the NRS. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, except as otherwise provided herein, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall be vested in the Surviving Corporation, and all debts, liabilities, obligations, restrictions, disabilities and duties of the Company and Merger Sub shall become the debts, liabilities, obligations, restrictions, disabilities and duties of the Surviving Corporation.

2.4 **Organizational Documents of the Surviving Corporation.** Merger Sub’s Articles of Incorporation, as in effect immediately prior to the execution of this Agreement, shall be the Articles of Incorporation of the Surviving Corporation until thereafter changed or

amended as provided therein or by applicable Law. The Bylaws of Merger Sub, as in effect immediately prior to the execution of this Agreement, shall be the Bylaws of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable Law.

2.5 **Director and Officers of the Surviving Corporation.** The director and officers of Merger Sub immediately prior to the Effective Time shall be the director and officers of the Surviving Corporation until the earlier of their resignation or removal or until their respective successors are duly designated, as the case may be.

### **ARTICLE III** **EFFECTS OF THE MERGER; EXCHANGE OF CERTIFICATES**

3.1 **Effect on Capital Stock.** Upon the terms and subject to the conditions of this Agreement, at the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Merger Sub, the Company or the holders of any shares of Company Common Stock:

(a) **Conversion of Company Common Stock.** Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than shares to be cancelled pursuant to Section 3.1(c) or Dissenting Shares) shall be converted into the right to receive, upon the surrender pursuant to Section 3.2 of the certificate representing such share, cash in an amount equal to the Offer Price (in the aggregate, the “Merger Consideration”). As of the Effective Time, all such shares of Company Common Stock shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and each holder of any shares of Company Common Stock shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration, to be issued in consideration therefor in accordance with Section 3.2, without interest.

(b) **Conversion of Merger Sub Common Stock.** Each share of common stock, no par value, of Merger Sub (the “Merger Sub Common Stock”) that is issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of common stock, \$0.001 par value per share, of the Surviving Corporation, and the shares of the Surviving Corporation into which the shares of Merger Sub Common Stock are so converted shall be the only shares of common stock of the Surviving Corporation that are issued and outstanding immediately after the Effective Time. Following the Effective Time, each certificate evidencing ownership of shares of Merger Sub Common Stock shall evidence ownership of such shares of common stock of the Surviving Corporation.

(c) **Cancellation of Certain Shares.** Each share, if any, of Company Common Stock that is held by the Company as treasury shares and each share of Company Common Stock which is owned by Merger Sub shall be cancelled and retired without any conversion, and no Merger Consideration or other consideration shall be delivered in exchange therefor.

(d) **Company Options.** Effective not later than the Closing, the Company shall take all actions required to provide that, effective as of the Closing, the Company Stock Plan and all Company Options outstanding immediately before the Closing shall be cancelled and of no further force or effect, and in consideration for such cancellation of Company Options outstanding under the Company Stock Plan immediately before the Closing, the holders thereof (whether or not such Company Options shall otherwise be exercisable at the Effective Time) shall automatically (and without any further action being required on the part of the holders thereof) receive, at the Effective Time, the amount, if any, in cash equal to (A) the number of shares of Company Common Stock subject to each such Company Option held by such holder multiplied by the excess, if any, of (I) the Offer Price over (II) the per-share exercise price under such Company Option (with such payments to be subject to any applicable tax withholding in accordance with Section 3.2(g)).

(e) **Company Preferred Stock.** Each share of Series A Cumulative Convertible Preferred Stock, par value \$0.001 per share, of the Company (the “Company Preferred Stock”) issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of preferred stock, \$0.001 par value per share, of the Surviving Corporation and otherwise shall not be affected or changed by the Merger or any other transaction contemplated by this Agreement, and such shares of the Surviving Corporation shall be the only shares of preferred stock of the Surviving Corporation that are issued and outstanding immediately after the Effective Time. Following the Effective Time, each certificate evidencing ownership of Company Preferred Stock shall evidence ownership of such shares of preferred stock of the Surviving Corporation.

(f) **Company Warrants.** Each Company Warrant issued and outstanding immediately prior to the Effective Time shall be converted into a warrant of the Surviving Corporation and shall evidence the same rights as contained in the Company Warrant, including the right, as a result of the Merger, to receive the Merger Consideration upon exercise.

### 3.2 **Exchange of Shares and Certificates.**

(a) **Exchange Agent.** At or prior to the Effective Time, Parent shall engage an exchange agent reasonably satisfactory to the Company for the payment of the Merger Consideration as provided in Section 3.1(a) (the “Exchange Agent”). At the Effective Time, Parent shall deposit with the Exchange Agent, in trust for the benefit of the holders of shares of Company Common Stock immediately prior to the Effective Time, the Merger Consideration to be paid in respect of each share of Company Common Stock. All cash deposited with the Exchange Agent shall hereinafter be referred to as the “Exchange Fund.”

(b) **Exchange Procedures.** Promptly after the Effective Time, Parent shall cause the Exchange Agent to mail to each holder of record of (1) a certificate or certificates which immediately prior to the Effective Time represented outstanding shares of Company Common Stock (the “Certificates”) or (2) uncertificated shares of Company

Common Stock (the “Uncertificated Shares”), in each case, which at the Effective Time were converted into the right to receive the Merger Consideration pursuant to Section 3.1, (i) a letter of transmittal (which, in the case of Certificates, shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and shall be in such form and have such other provisions as Parent may reasonably specify) and (ii) instructions for use in effecting the surrender of the Certificates or Uncertificated Shares in exchange for the Merger Consideration. Upon (i) surrender of Certificates for cancellation to the Exchange Agent or to such other agent or agents as may be appointed by Parent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, or (ii) receipt of an “agent’s message” by the Exchange Agent (or such other evidence, if any, of transfer as the Exchange Agent may reasonably request) in the case of a book-entry transfer of Uncertificated Shares, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Certificates or Uncertificated Shares shall be entitled to receive in exchange the Merger Consideration to which such holder is entitled pursuant to Section 3.1, and any Certificates so surrendered shall forthwith be cancelled. If any portion of the Merger Consideration is to be paid to a Person other than the Person in whose name the surrendered Certificate or the transferred Uncertificated Share is registered, it shall be a condition to such payment that (i) either such Certificate shall be properly endorsed or shall otherwise be in proper form for transfer or such Uncertificated Share shall be properly transferred and (ii) the Person requesting such payment shall pay to the Exchange Agent any transfer or other taxes required as a result of such payment to a Person other than the registered holder of such Certificate or Uncertificated Share or establish to the satisfaction of Parent that such tax has been paid or is not payable. Until surrendered as contemplated by this Section 3.2(b), each Certificate or Uncertificated Share shall be deemed at any time after the Effective Time to represent only the right to receive the Merger Consideration upon such surrender.

(c) **No Further Ownership Rights in Company Common Stock.** At the Effective Time, the stock transfer books of the Company shall be closed and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of Company Common Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates or Uncertificated Shares are presented to the Surviving Corporation or the Exchange Agent for any reason, they shall be cancelled and exchanged as provided in this Article III.

(d) **Termination of Exchange Fund.** Any portion of the Exchange Fund which remains undistributed to the holders of Company Common Stock twelve (12) months after the Effective Time shall be delivered to the Surviving Corporation, upon demand, and any holders of Company Common Stock who have not theretofore complied with this Article III shall thereafter look only to the Surviving Corporation for payment of their claim for the Merger Consideration.

(e) **No Liability.** None of Parent, Merger Sub, the Company or the Exchange Agent or any of their respective directors, officers, employees and agents shall be liable to any Person in respect of Merger Consideration delivered to a public official pursuant to

any applicable abandoned property, escheat or similar Law. If any Certificate or Uncertificated Share shall not have been surrendered prior to the date on which any Merger Consideration would otherwise escheat to or become the property of any Governmental Entity, any such Merger Consideration shall, to the extent permitted by applicable Law, become the property of the Parent, free and clear of all claims or interests of any Person previously entitled thereto.

(f) **Investment of Exchange Fund.** The Exchange Agent shall invest any cash included in the Exchange Fund as directed by Parent on a daily basis provided that no such investment or loss thereon shall affect the amounts payable to former stockholders of the Company after the Effective Time pursuant to this Article III and Parent and the Surviving Corporation shall remain liable for the full payment of any such amounts. Any interest and other income resulting from such investment shall become a part of the Exchange Fund, and any amounts in the Exchange Fund in excess of the amounts payable pursuant to this Article III shall promptly be paid to Parent until termination of the Exchange Fund in accordance with Section 3.2(d).

(g) **Withholding Rights.** The Surviving Corporation and the Exchange Agent shall be entitled to deduct and withhold from any consideration payable pursuant to this Agreement to any Person who was a holder of Company Common Stock, Company Options or Company Warrants immediately prior to the Effective Time such amounts as the Surviving Corporation or the Exchange Agent may be required to deduct and withhold with respect to the making of such payment under the Code or any other provision of applicable tax Law. To the extent that amounts are so withheld by the Surviving Corporation or the Exchange Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person to whom such consideration would otherwise have been paid.

(h) **Lost, Stolen or Destroyed Certificates.** In the event any Certificates shall have been lost, stolen or destroyed, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof, such Merger Consideration as may be required pursuant to Section 3.1(a); provided, however, that Parent may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Certificates to deliver an agreement of indemnification in form reasonably satisfactory to Parent, or a bond in such sum as Parent may reasonably direct as indemnity, against any claim that may be made against Parent, the Surviving Corporation or the Exchange Agent in respect of the Certificates alleged to have been lost, stolen or destroyed.

3.3 **Dissenting Shares.** Notwithstanding any provision of this Agreement to the contrary, shares of Company Common Stock that are issued and outstanding immediately prior to the Effective Time and which are held by stockholders who properly exercise dissenter's rights with respect thereto in accordance with Section 380 of Chapter 92A of the NRS (the "Dissenting Shares") shall not be exchangeable for the right to receive the Merger Consideration, and holders of such Dissenting Shares will be entitled only to their rights under the NRS. The Company shall give Parent (i) prompt notice of any demands received by the Company for appraisals of shares of Company Common Stock and (ii) the opportunity to direct all

negotiations and proceedings with respect to demands for appraisal under the NRS. The Company shall not, except with the prior written consent of Parent, make any payment with respect to any demands for appraisal or offer to settle or settle any such demands. After the Effective Time, the Surviving Corporation shall be obligated for any payments to holders of Dissenting Shares who comply with the applicable provisions of the NRS.

#### **ARTICLE IV**

#### **REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company represents and warrants to Parent and Merger Sub as of the date hereof and as of the Closing Date (except for those representations and warranties made as of a specific date or time) as follows (except as set forth in the written disclosure letter (which letter shall in each case specifically identify by reference to Sections of this Agreement any exceptions to each of the representations, warranties and covenants contained in this Agreement; provided, however, that any information set forth in one section of such disclosure letter shall be deemed to apply to each other section or subsection thereof or hereof to which its relevance is readily apparent irrespective of any specific reference to such other section or subsection) delivered by the Company to Parent and Merger Sub in connection with the execution and delivery of this Agreement (the “Company Disclosure Letter”)):

#### **4.1 Organization, Standing and Corporate Power.**

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted. The Company is duly qualified or licensed as a foreign corporation to do business and is in good standing in each jurisdiction in which the nature or conduct of its business or the ownership, leasing or operation of its properties requires it to be so qualified, licensed or in good standing, except for such jurisdictions where the failure to be so qualified, licensed or to be in good standing would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(b) Each Company Subsidiary is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite corporate (or similar) power and authority to own, lease and operate its properties and to carry on its business as now being conducted. Each Company Subsidiary is duly qualified or licensed as a foreign corporation or other legal entity to do business and is in good standing in each jurisdiction in which the nature or conduct of its business or the ownership, leasing or operation of its properties requires it to be so qualified, licensed or in good standing, except for such jurisdictions where the failure to be so qualified, licensed or to be in good standing would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(c) The Company has made available to Parent true and complete copies of the Articles of Incorporation of the Company, as amended through the date of this Agreement (as so amended, the “Company Articles of Incorporation”); the Bylaws of the

Company, as amended through the date of this Agreement (as so amended, the “Company Bylaws” and together with the Company Articles of Incorporation, the “Company Organizational Documents”); and the comparable charter and organizational documents of each Company Subsidiary, in each case as amended through the date of this Agreement. The Company Organizational Documents are in full force and effect. The Company is not in violation of any provision of the Company Organizational Documents, and no Company Subsidiary is in material violation of any provision of its articles of incorporation, bylaws or equivalent organizational documents.

(d) The Company has made available to Parent and Merger Sub complete and correct copies of the minutes (or, in the case of minutes that have not yet been finalized, drafts thereof) of all meetings of the stockholders of the Company and each of the Company Subsidiaries (to the extent available), the boards of directors of the Company and each of the Company Subsidiaries (to the extent available) and the committees of each such board of directors (to the extent available), in each case held since January 1, 2008 and prior to the date hereof.

#### 4.2 **Capitalization.**

(a) The authorized capital stock of the Company consists of (i) 100,000,000 shares of Company Common Stock, par value \$0.001 per share, and (ii) 5,000,000 shares of Company Preferred Stock, par value \$0.001 per share. At the close of business on December 9, 2009, (i) 40,905,904 shares of Company Common Stock were issued and outstanding, (ii) 12,135 shares of Company Preferred Stock were issued and outstanding, (iii) zero shares of Company Common Stock were held by Company in its treasury, (iv) an aggregate 3,000,000 shares of Company Common Stock were reserved for issuance pursuant to outstanding awards and rights under the Company’s 2005 Equity Incentive Plan (the “Company Stock Plan”), of which 1,130,050 shares of Company Common Stock were subject to outstanding and unexercised options entitling the holder thereof to purchase a share of Company Common Stock (each, a “Company Option”), and (v) 2,061,667 shares were reserved for issuance relating to outstanding warrants, of which 2,061,667 shares of Company Common Stock were subject to outstanding and unexercised warrants entitling the holder thereof to purchase a share of Company Common Stock (each, a “Company Warrant”).

(b) Except as set forth in Section 4.2(a) above, at the close of business on December 9, 2009, no shares of capital stock or other voting securities of the Company were issued, reserved for issuance or outstanding. Except as set forth in Section 4.2(a) above or as provided in this Agreement, as of the date hereof, there are no options, warrants, convertible or exchangeable securities, subscriptions, stock appreciation rights, phantom stock rights or stock equivalents or other rights, agreements, arrangements or commitments (contingent or otherwise) of any character issued or authorized by the Company or any Company Subsidiary (i) relating to any issued or unissued capital stock or equity interest of the Company or any Company Subsidiary, (ii) obligating the Company or any Company Subsidiary to issue, deliver or sell, or cause to be issued, delivered or sold, any shares of capital stock of, or options, warrants, convertible or exchangeable securities, subscriptions or other equity interests in, the Company or any

Company Subsidiary or (iii) that give any Person the right to receive any economic benefit or right similar to or derived from the economic benefits and rights accruing to holders of capital stock of the Company or any Company Subsidiary (each of (i), (ii) and (iii), collectively, the “Company Stock Rights”). All outstanding shares of Company Common Stock are, and all shares of Company Common Stock that may be issued prior to the Effective Time will be, when issued, duly authorized, validly issued, fully paid and nonassessable. Except as set forth in Section 4.2(b) of the Company Disclosure Letter, there are no outstanding contractual obligations of the Company or any Company Subsidiary to repurchase, redeem or otherwise acquire any capital stock or equity interest of the Company (including any shares of Company Common Stock) or any Company Subsidiary or any Company Stock Rights or to pay any dividend or make any other distribution in respect thereof or to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any Person.

(c) Section 4.2(c) of the Company Disclosure Letter sets forth a true, complete and correct list, as of December 9, 2009, of (i) all Company Options, the number of shares of Company Common Stock subject thereto, the grant dates, expiration dates, the exercise or base prices and the names of the holders thereof, (ii) all other outstanding awards under the Company Stock Plans, the number of shares of Company Common Stock subject thereto, the holders thereof and the vesting schedules thereof, and (iii) all Company Warrants, the number of shares of Company Common Stock subject thereto, the grant dates, the expiration dates, the exercise or base prices and the name of the holders thereof.

(d) Section 4.2(d) of the Company Disclosure Letter sets forth all the Subsidiaries of the Company (each a “Company Subsidiary” and together, the “Company Subsidiaries”) in existence as of the date hereof. All the outstanding shares of capital stock of, or other equity interests in, each such Company Subsidiary have been duly authorized and validly issued and are fully paid and nonassessable and are, except as set forth in such Section 4.2(d) of the Company Disclosure Letter, owned directly or indirectly by the Company, free and clear of all pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever (collectively, “Liens”) and free of any other restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other ownership interests), except for restrictions imposed by applicable securities laws. Neither the Company nor any of the Company Subsidiaries directly or indirectly owns or has any right or obligation to subscribe for or otherwise acquire any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for any equity or similar interest in, any corporation, partnership, joint venture or other business association or entity (other than the Company Subsidiaries).

#### 4.3 **Authority.**

(a) The Company has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and, subject to satisfying (without waiver) the Minimum Tender Condition and obtaining the Company Stockholder Approval, if required, to consummate the Merger and the other transactions

contemplated hereby. The execution and delivery by the Company of this Agreement, the performance of the Company's obligations hereunder and the consummation by the Company of the Merger have been duly authorized by all necessary corporate action on the part of the Company and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement or to consummate the Merger (other than obtaining the Company Stockholder Approval and the filing and recordation of appropriate merger documents as required by the NRS). This Agreement has been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms subject, as to enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights and remedies of creditors generally and to the effect of general principles of equity. If approval of the Merger by the stockholders of the Company is required pursuant to the NRS, the affirmative vote of a majority of outstanding shares of Company Common Stock entitled to vote in accordance with the NRS, the Company Articles of Incorporation and the Company Bylaws and the affirmative vote of two-thirds (2/3) of the outstanding shares of the Company Preferred Stock entitled to vote in accordance with the NRS, the Company Articles of Incorporation and the Company Bylaws (the "Company Stockholder Approval") are the only votes of the holders of capital stock of the Company necessary to approve the Merger.

(b) The Company Board, at a meeting duly called and held, by approval of a majority of the directors adopted resolutions (i) approving this Agreement, including the terms and conditions of the Offer, the Merger and the other transactions contemplated by this Agreement, (ii) determining, upon recommendation of the Special Committee, that this Agreement and the transactions contemplated herein are advisable and that the terms of the Offer, the Merger and the other transactions contemplated by this Agreement are fair to and in the best interests of the Company and its stockholders, and (iii) if approval of the stockholders of the Company is required pursuant to the NRS, recommending that the stockholders of the Company accept the Offer and, if required, approve the Merger.

(c) Matrix Capital Markets Group has delivered to the Special Committee and the Company Board its opinion to the effect that, as of the date of such opinion and based on the assumptions, qualifications and limitations contained therein, the consideration to be received by the holders of Company Common Stock (other than as set forth in such opinion) pursuant to the Offer and the Merger is fair, from a financial point of view, to such holders. When such opinion is provided in writing to the Company, the Company will make available to Parent a correct and complete copy of the form of such opinion solely for informational purposes after receipt thereof by the Company.

4.4 **No Conflict**. Except as set forth in Section 4.4 of the Company Disclosure Letter, the execution and delivery of this Agreement by the Company do not, and the performance of its obligations hereunder by the Company and the consummation of the Offer, the Merger and the other transactions contemplated hereby will not, (a) assuming the Company Stockholder Approval is obtained, if required, for consummation of the Merger, conflict with or violate (i) the Company Organizational Documents or (ii) the equivalent organizational documents of any of

the Company Subsidiaries, (b) assuming compliance with Section 4.5 hereof and assuming the Company Stockholder Approval is obtained, if required, for consummation of the Merger, conflict with or violate any United States federal, state, local or any foreign statute, law, rule, regulation, ordinance, code or any other requirement or rule of law (a “Law”) or any charge, order, writ, injunction, judgment, guideline, guidance, decree, ruling, determination, directive, award or settlement, whether civil, criminal or administrative (an “Order”), in each case applicable to the Company or any of the Company Subsidiaries or by which any property or asset of the Company or any of the Company Subsidiaries is bound or affected, or (c) result in a breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, give to others any right of termination, amendment, acceleration or cancellation of, result in the triggering of any payment or other obligation or any right of consent, or result in the creation of a Lien on any property or asset of the Company or any of the Company Subsidiaries pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which the Company or any of the Company Subsidiaries is a party or by which the Company or any of the Company Subsidiaries or any property or asset of any of them is bound or affected, except, in the case of clauses (a)(ii), (b) and (c) above, for any such conflicts, violations, breaches, defaults or other occurrences which have not had and are not reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect.

4.5 **Required Filings and Consents.** Except as set forth in Section 4.5 of the Company Disclosure Letter, the execution and delivery by the Company of this Agreement does not, and the performance by the Company of this Agreement will not, require any consent, approval, order, authorization or permit of, or declaration, registration, filing with, or notification to, any United States federal, state or local or any foreign government or any court, administrative or regulatory authority or commission or other governmental or government-authorized authority or agency, domestic or foreign (a “Governmental Entity”), except for (i) applicable requirements, if any, of (A) state securities or “blue sky” laws and (B) the NRS to file the Certificate of Merger in connection with the consummation of the Merger and (ii) the filing of customary applications and notices, as applicable, with any Governmental Entity.

4.6 **Brokers; Schedule of Fees and Expenses.** No broker, investment banker, financial advisor or other Person, other than Matrix Capital and Stephens, Inc., the fees and expenses of which will be paid by the Company, is entitled to any broker’s, finder’s, financial advisor’s or other similar fee or commission in connection with the Offer, the Merger or the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company. The Company has furnished to Parent a true and complete copy of all agreements between the Company and each of Matrix Capital and Stephens, Inc. relating to the Offer, the Merger and the other transactions contemplated by this Agreement.

4.7 **Related Party Transactions.** Section 4.7 of the Company Disclosure Letter, sets forth a listing of all transactions, arrangements and other relationships between and/or among the Company, any of its Affiliates (other than Parent, Greinke, the Greinke Trust and any of their respective Affiliates), including but not limited to Thomas Kelly, and any special purpose or limited purpose entity beneficially owned by or formed at the direction of the Company or any of its Affiliates since January 1, 2008.

**ARTICLE V**  
**REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB**

Each of Parent and Merger Sub represents and warrants to the Company as of the date hereof and as of the Closing Date (except for those representations and warranties made as of a specific date or time) as follows (except as set forth in the written disclosure letter (which letter shall in each case specifically identify by reference to Sections of this Agreement any exceptions to each of the representations, warranties and covenants contained in this Agreement; provided, however, that any information set forth in one section of such disclosure letter shall be deemed to apply to each other section or subsection thereof or hereof to which its relevance is readily apparent irrespective of any specific reference to such other section or subsection) delivered by Parent and Merger Sub to the Company in connection with the execution and delivery of this Agreement (the “Parent Disclosure Letter”)):

5.1 **Organization and Good Standing.** Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation. Parent is the legal and beneficial owner of all of the issued and outstanding capital stock of Merger Sub. Merger Sub was formed at the direction of Parent solely for the purposes of effecting the Merger and the other transactions contemplated hereby. As of the date hereof, Merger Sub has not conducted any business other than entering into this Agreement. Merger Sub has made available to Company true and complete copies of the Articles of Incorporation of Merger Sub, as amended through the date of this Agreement (as so amended, the “Merger Sub Articles of Incorporation”), the Certificate of Designations of Merger Sub, as amended through the date of this Agreement (as so amended, the the “Merger Sub Certificate of Designations”) and the Bylaws of Merger Sub, as amended through the date of this Agreement (as so amended, the “Merger Sub Bylaws” and together with the Merger Sub Articles of Incorporation and the Merger Sub Certificate of Designations, the “Merger Sub Organizational Documents”). The Merger Sub Organizational Documents are in full force and effect. Merger Sub is not in violation of any provision of the Merger Sub Organizational Documents.

5.2 **Authority.**

(a) Each of Parent and Merger Sub has all necessary organizational power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the Offer, the Merger and the other transactions contemplated hereby. The execution, delivery and performance by each of Parent and Merger Sub of this Agreement and the consummation by each of Parent and Merger Sub of the Offer, the Merger and the other transactions contemplated hereby, have been duly authorized by all necessary organizational action on the part of each of Parent and Merger Sub and no other organizational proceedings on the part of each of Parent or Merger Sub, respectively, are necessary to authorize this Agreement or to consummate the Offer or the Merger or the other transactions contemplated hereby (other than the filing and recordation of appropriate merger documents as required by the NRS). Each of this Agreement has been, or prior to the Effective Time will be, duly executed and delivered by each of Parent and Merger Sub, as applicable, and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes a legal, valid and binding obligation of each of Parent and Merger Sub enforceable against each of Parent and

Merger Sub in accordance with its terms subject, as to enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights and remedies of creditors generally and to the effect of general principles of equity. The affirmative vote of a majority of the total votes cast by holders of common stock, no par value, of Merger Sub entitled to vote (the “Merger Sub Stockholder Approval”) is the only vote of the holders of capital stock of Merger Sub necessary to approve the Merger.

(b) The board of directors of the corporate general partner of Parent, at a meeting duly called and held or by written consent, duly and unanimously adopted resolutions approving this Agreement, including the terms and conditions of the Offer, the Merger and the other transactions contemplated by this Agreement.

(c) The board of directors of Merger Sub, at a meeting duly called and held (or acting by written consent), duly and unanimously adopted resolutions (i) approving this Agreement, including the terms and conditions of the Offer, the Merger and the other transactions contemplated by this Agreement, (ii) determining that the terms of the Offer, the Merger and the other transactions contemplated by this Agreement are fair to and in the best interests of Merger Sub and its sole stockholder, and (iii) recommending that Parent, as the sole stockholder of Merger Sub, approve and adopt this Agreement and the Merger.

(d) Parent, in its capacity as sole stockholder of Merger Sub, has approved and adopted this Agreement and the Merger.

5.3 **No Conflict.** The execution and delivery of this Agreement by each of Parent and Merger Sub do not, and the performance of this Agreement by each of Parent and Merger Sub and the consummation of the Offer, the Merger and the other transactions contemplated hereby will not (a) conflict with or violate (i) the limited partnership agreement of Parent or (ii) the Articles of Incorporation of Merger Sub or the Bylaws of Merger Sub, (b) assuming compliance with Section 5.4, conflict with or violate any Law or any Order, or (c) result in a breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, give to others any right of termination, amendment, acceleration or cancellation of, result in the triggering of any payment or other obligation or any right of consent, or result in the creation of a Lien on any property or asset of Parent or any of its Subsidiaries pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Parent or any of its Subsidiaries is a party or by which Parent or any of its Subsidiaries or any property or asset of any of them is bound or affected except, in the case of clauses (b) and (c) above, for any such conflicts, violations, breaches, defaults or other occurrences which have not had and are not reasonably expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

5.4 **Required Filings and Consents.** The execution and delivery by each of Parent and Merger Sub of this Agreement do not, and the performance by each of Parent and Merger Sub of their respective obligations under this Agreement will not, require any consent, approval, order, authorization or permit of, or declaration, registration, filing with, or notification to, any Governmental Entity, except for (i) applicable requirements, if any, of (A) state securities or “blue sky” laws and (B) the NRS to file the Certificate of Merger in connection with the

consummation of the Merger and (ii) and the filing of customary applications and notices, as applicable, with any Governmental Entity.

5.5 **Financing.** Each of Parent and Merger Sub has cash available or has existing borrowing facilities or firm financing commitments that are sufficient to enable it to pay the Offer Price for all shares of Company Common Stock tendered in the Offer and the Merger Consideration as required by this Agreement and to otherwise consummate the transactions contemplated by this Agreement.

5.6 **Brokers.** No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Offer, the Merger or the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent or Merger Sub.

5.7 **Prior Purchases.** Except for shares issued to Greinke as a director, during the six-month period immediately prior to the date hereof, neither Greinke nor any Person controlled by Greinke (including within this group of Persons the immediate family members of Greinke but excluding unrelated officers of entities controlled by Greinke) has purchased or otherwise acquired, or agreed to purchase or otherwise acquire, any shares of Company Common Stock at a per share price greater than the Offer Price.

5.8 **Share Ownership.** The number of shares of Company Common Stock owned of record by each of Parent, its Subsidiaries, the Greinke Trust, Greinke, and United Fuel Investments, LP, and their respective Affiliates, and each of their respective officers and directors (other than the directors of the Company who are not Greinke) (collectively, the "Excluded Shares") as of the date of this Agreement is as set forth in Section 5.8 of the Parent Disclosure Letter.

## **ARTICLE VI** **COVENANTS**

6.1 **Conduct of Company's Business Pending the Merger.** From the date of this Agreement until the Effective Time, except as otherwise consented to by Parent in writing (including by electronic mail) (such consent not to be unreasonably withheld, conditioned or delayed), and except as disclosed in Section 6.1(a) of the Company Disclosure Letter or as otherwise explicitly required by this Agreement, (i) the Company shall, and shall cause the Company Subsidiaries to, conduct their respective businesses only in, and the Company and the Company Subsidiaries shall not take any action (including the issuance, delivery or sale of any shares of the Company's capital stock other than pursuant to the valid and proper exercise of the Company Options or the Company Warrants) except in, the ordinary course of business consistent with past practice and (ii) the Company and the Company Subsidiaries shall use commercially reasonable efforts to preserve substantially intact their business organizations, to preserve their assets and properties in good repair and condition, to keep available the services of their current officers and employees and to preserve, in all material respects, the current relationships of the Company and the Company Subsidiaries with customers, suppliers, distributors and other Persons with which the Company or the Company Subsidiaries have business dealings.

6.2 **Notification of Certain Matters.** Parent and Merger Sub shall give prompt notice to the Company and the Company shall give prompt notice to Parent, as the case may be, of the occurrence, or failure to occur, of any event, which occurrence or failure to occur is reasonably likely to cause (a)(i) any representation or warranty of such party contained in this Agreement that is qualified as to "materiality," "Company Material Adverse Effect" or "Parent Material Adverse Effect" to be untrue or inaccurate in any respect or (ii) any other representation or warranty of such party contained in this Agreement to be untrue or inaccurate in any material respect, in each case at any time from and after the date of this Agreement until the Offer Closing or (b) any material failure of Parent and Merger Sub or the Company, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement. In addition, Parent shall give prompt notice to the Company and the Company shall give prompt notice to Parent, as the case may be, of any change or event having, or which is reasonably likely to have, a Parent Material Adverse Effect or Company Material Adverse Effect, as the case may be, or which would be reasonably likely to result in the failure of any of the Offer Conditions to be satisfied. Notwithstanding the above, the delivery of any notice pursuant to this Section 6.2 will not limit or otherwise affect the representations, warranties, covenants or agreements of the parties, the remedies available hereunder to the party receiving such notice or the conditions to such party's obligation to consummate the Offer or the Merger.

6.3 **No Solicitation; Company Board Recommendation.**

(a) Except as contemplated by this Agreement, the Company shall not, and shall not authorize or permit any of the Company Subsidiaries or its or their Representatives to, directly or indirectly, (i) solicit, initiate, encourage or take any other action designed to, or which is reasonably expected to, facilitate any Company Takeover Proposal, (ii) enter into any agreement with respect to any Company Takeover Proposal

or (iii) enter into, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any Person any non-public information with respect to, or otherwise cooperate with, any proposal that constitutes, or is reasonably expected to lead to, any Company Takeover Proposal. The Company shall, and shall cause the Company Subsidiaries and its Representatives to, immediately cease and cause to be terminated all existing discussions or negotiations with any Person conducted heretofore with respect to any proposal that constitutes, or is reasonably expected to lead to, any Company Takeover Proposal and request the prompt return or destruction of all non-public information previously furnished. Notwithstanding the foregoing, at any time prior to the Offer Closing, in response to a bona fide written Company Takeover Proposal that the Company Board determines (after consultation with outside counsel and its financial advisor) constitutes, or is reasonably expected to lead to, a Superior Proposal, and which Company Takeover Proposal was not solicited after the date hereof and did not otherwise result from a breach of this Section 6.3(a), the Company may, if a majority of the Company Board determines (after consultation with outside counsel) that it is advisable to take such actions in order to comply with its fiduciary duties to the stockholders of the Company under applicable Law, and subject to compliance with this Section 6.3(a) and Section 6.3(c) and after giving Parent written notice of such determination, (x) furnish information with respect to the Company and the Company Subsidiaries to the Person making such Company Takeover Proposal (and its Representatives) pursuant to a customary confidentiality agreement; provided that such customary confidentiality agreement expressly provides the right for the Company to comply with the terms of this Agreement, including Section 6.3(b) and Section 6.3(c), and (y) participate in discussions or negotiations with the Person making such Company Takeover Proposal (and its Representatives) regarding such Company Takeover Proposal. Without limiting the foregoing, it is agreed that any violation of the restrictions set forth in this Section 6.3(a) by any Representative or Affiliate of the Company or any Company Subsidiary shall be deemed to be a breach of this Section 6.3(a) by the Company.

The term “Company Takeover Proposal” means any inquiry, proposal or offer from any Person relating to, or that is reasonably expected to lead to, any direct or indirect acquisition or purchase, in one transaction or a series of transactions, of any material portion of the assets or businesses of the Company and the Company Subsidiaries, taken as a whole, or 20% or more of any class of equity securities of the Company or any Company Subsidiary, any tender offer or exchange offer that if consummated would result in any Person beneficially owning 20% or more of any class of equity securities of the Company or any Company Subsidiary, or any merger, consolidation, business combination, recapitalization, liquidation, dissolution, joint venture, binding share exchange or similar transaction involving the Company or any Company Subsidiary pursuant to which any Person or the stockholders of any Person would own 20% or more of any class of equity securities of the Company or any Company Subsidiary or of any resulting parent company of the Company, other than the transactions contemplated by this Agreement.

The term “Superior Proposal” means a bona fide Company Takeover Proposal which the Company Board determines in good faith (after consultation with outside counsel and its financial advisor) to be (i) more favorable to the stockholders of the

Company than the Offer and the Merger, taking into account all relevant factors (including all the terms and conditions of such proposal and the Offer and this Agreement (including any changes to the terms of the Offer and this Agreement proposed by Parent in response to such offer or otherwise)) and (ii) reasonably capable of being completed, taking into account all financial, legal, regulatory and other aspects of such proposal.

(b) Neither the Company Board nor any committee thereof (other than the Special Committee) shall, (i) (A) withdraw (or qualify or modify in a manner adverse to Parent or Merger Sub) or publicly propose to withdraw (or qualify or modify in a manner adverse to Parent or Merger Sub) the adoption, approval, recommendation or declaration of advisability by the Company Board or any such committee thereof of this Agreement, the Offer, the Merger or the other transactions contemplated by this Agreement or (B) recommend, adopt, approve or declare advisable, or propose publicly to recommend, adopt, approve or declare advisable, any Company Takeover Proposal (any action described in this clause (i) being referred to as a “Company Adverse Recommendation Change”) or (ii) adopt, approve, recommend or declare advisable, or propose to adopt, approve, recommend or declare advisable, or allow the Company or any of the Company Subsidiaries to execute or enter into, any letter of intent, memorandum of understanding, agreement in principle, merger agreement, acquisition agreement, option agreement, joint venture agreement, partnership agreement or other similar agreement constituting or related to, or that is intended to or is reasonably expected to lead to, any Company Takeover Proposal (other than a confidentiality agreement referred to in Section 6.3(a) pursuant to and in accordance with the limitations set forth therein). Notwithstanding the foregoing, at any time prior to the Effective Time, the Company Board may make a Company Adverse Recommendation Change if a majority of the Company Board determines (after consultation with outside counsel) that it is advisable to take such actions in order to comply with its fiduciary duties to the stockholders of the Company under applicable Law; provided, however, that no such Company Adverse Recommendation Change may be made until after Parent’s receipt of written notice (a “Company Notice of Adverse Recommendation”), which may be sent via facsimile or other electronic transmission, from the Company advising Parent that the Company Board intends to take such action and specifying the reasons therefor, including the terms and conditions of any Superior Proposal that is the basis of the proposed action by the Company Board (it being understood and agreed that (x) any amendment to any material term of such Superior Proposal or (y) with respect to any previous Company Adverse Recommendation Change, any material change in the principal stated rationale by the Company Board for such previous Company Adverse Recommendation Change, shall, in the case of either (x) or (y), require a new Company Notice of Adverse Recommendation). Upon receipt of the Company Notice of Adverse Recommendation, Parent shall have the right to propose changes to the terms of this Agreement. In determining whether to make a Company Adverse Recommendation Change, the Company Board shall take into account any changes to the terms of this Agreement proposed by Parent in response to a Company Notice of Adverse Recommendation or otherwise.

(c) In addition to the obligations of the Company set forth in Section 6.3(a) and Section 6.3(b), (i) the Company shall promptly advise Parent orally and in writing

(and in any case within 48 hours) of any Company Takeover Proposal or any inquiry that is reasonably expected to lead to any Company Takeover Proposal, the material terms and conditions of any such Company Takeover Proposal or inquiry (including any changes thereto) and the identity of the Person making any such Company Takeover Proposal or inquiry and (ii) the Company shall (A) keep Parent informed of the status and material details (including any change to any material term thereof) of any such Company Takeover Proposal or inquiry and (B) provide to Parent upon request by Parent copies of all correspondence and other written material sent or provided to the Company or any of the Company Subsidiaries from any Person that describes any of the terms or conditions of any Company Takeover Proposal or inquiry. In addition, during the period from the date of this Agreement through the Offer Closing, the Company shall not terminate, amend, modify or waive any provision of any confidentiality agreement to which it or any of its Subsidiaries is a party. During such period, the Company shall enforce the provisions of any such agreement as it deems appropriate.

(d) Nothing contained in this Agreement shall prohibit the Company from taking and disclosing to its stockholders a position contemplated by the Solicitation/Recommendation Statement or from making any disclosure to the stockholders of the Company if, in the good faith judgment of the Company Board, after consultation with outside counsel, failure to so disclose would be inconsistent with the fiduciary duties of the Company Board under applicable Law; provided, however, that all actions taken or agreed to be taken by the Company or the Company Board or any committee thereof (other than the Special Committee) related to the actions described in this paragraph shall comply with the provisions of Section 6.3(a).

(e) Notwithstanding anything to the contrary in this Agreement, if at any time after the date of this Agreement and before the Effective Time, the Special Committee (after consultation with, and taking into account the advice of, its outside legal advisors and financial consultants) determines that the Offer, the Merger, this Agreement and the other transactions contemplated hereby are no longer in the best interests of the Company, in the best interests of all of the stockholders of the Company or in the best interests of those stockholders who are not Affiliates of Parent, Merger Sub, Greinke Trust or Greinke Trust, the Special Committee, upon written notice to Parent, may withdraw its recommendation to the Company Board of the Offer, the Merger, this Agreement and the other transactions contemplated hereby.

6.4 **Stockholder Litigation.** The Company shall give Parent the opportunity to participate (at Parent's expense) in the defense or settlement of any stockholder litigation against the Company and its directors relating to the Offer, the Merger or the other transactions contemplated by this Agreement; provided, however, that no such settlement shall be agreed to without Parent's prior written consent, which consent shall not be unreasonably withheld or delayed, except that Parent shall not be obligated to consent to any settlement which does not include a full release of Parent and its Affiliates or which imposes an injunction or other equitable relief upon Parent or any of its Affiliates (including, after the Effective Time, the Surviving Corporation).

6.5 **Indemnification; Director and Officer Insurance.** At all times after the Effective Time, Parent agrees to cause the Surviving Corporation to indemnify and hold harmless all past and present directors, officers and employees of the Company to the same extent such Persons are indemnified as of the date of this Agreement by the Company pursuant to the Company Articles of Incorporation and Company Bylaws and indemnification agreements, if any, in existence on the date of this Agreement with any directors, officers or employees of the Company for acts or omissions occurring at or prior to the Effective Time. Parent shall cause the Surviving Corporation to provide, for an aggregate period of not less than three (3) years from the Effective Time, the Company's past and current directors and officers a prepaid insurance and indemnification policy that provides coverage for events occurring prior to the Effective Time with respect to directors' and officers' liability in an amount and scope no less favorable than the Company's existing directors' and officers' insurance policy (the "D&O Insurance") or, if substantially equivalent insurance coverage is unavailable, the best available coverage; provided, however, that such D&O Insurance must include a provision that (i) as a matter of priority in any such bankruptcy, insolvency or other reorganization of the Company, the insurer under the D&O Insurance shall first pay any monies available under the D&O Insurance under Coverage A, then under Coverage C, then under Coverage B and lastly under Coverage D and (ii) any exclusion for coverage in a situation where one insured Person under the D&O Insurance brings a claim against another insured Person under the D&O Insurance does not apply to a claim brought against a past or present director of the Company by a bankruptcy trustee, examiner, liquidator, receiver, rehabilitator or creditors' committee of or for the Company or any assignee of any of the foregoing; provided, further, that such D&O Insurance shall not be cancellable by Parent, Merger Sub or otherwise without the consent of each of the directors of the Company serving on the date hereof.

6.6 **Public Announcements.** The initial press release shall be a joint press release made by Parent and the Company and thereafter, during the period between the date of this Agreement and the earlier of the Offer Closing and the termination of this Agreement in accordance with Section 8.1, the Company, Parent and Merger Sub each shall consult with the other prior to issuing any press releases or making other public statements and communications with respect to the Merger, or the other transactions contemplated by this Agreement, except as may be required by applicable Law.

6.7 **Stockholders' Meeting.** The Merger shall be consummated in accordance with the requirements of Chapter 92A of the NRS. If the Merger cannot be consummated in accordance with the short-form merger provisions of such statute, the Company shall take all action necessary to either (i) obtain approval by the stockholders of the Company by written consent in accordance with the NRS or (ii) duly call, give notice of, convene and hold a meeting of its stockholders as promptly as reasonably practicable for the purpose of obtaining the approval by the stockholders of the Company in accordance with the NRS (the "Company Stockholders' Meeting"). If a meeting is held, the Company shall ensure that the Company Stockholders' Meeting is called, noticed, convened, held and conducted, and that all proxies solicited in connection with the Company Stockholders' Meeting are solicited in compliance with applicable Law and the Company Organizational Documents.

6.8 **Best Price.** Until the earlier to occur of (a) the Closing Date or (b) termination of this Agreement, Parent and Merger Sub shall not, and shall not cause or permit any of their

Affiliates to, purchase or otherwise acquire, or agree to purchase or otherwise acquire, any shares of Company Common Stock at a per share price greater than the Offer Price.

6.9 **State Takeover Laws.** If any state takeover Law becomes applicable to the Merger or the other transactions contemplated by this Agreement, the Company and the Company Board shall to the extent consistent with its fiduciary duties under applicable Law grant such approvals and cooperate to the extent reasonably requested by Parent and Merger Sub so that such transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise act to eliminate or minimize the effects of such statute or regulation on such transactions.

6.10 **Voting of Shares.** Parent shall give (or cause to be given) its written consent with respect to all shares of Company Common Stock and Company Preferred Stock owned of record by it or any of its Subsidiaries (including Merger Sub), Greinke and Greinke Trust in favor of approval of the Merger or, if a Company Stockholders' Meeting is called, shall vote (or cause to be voted) all such shares of Company Common Stock in favor of approval of the Merger at the Company Stockholders' Meeting, unless the NRS does not require a vote of the stockholders of the Company for consummation of the Merger.

6.11 **Conduct of Business by Parent and Merger Sub Pending the Merger.** From the date of this Agreement until the Offer Closing Date, except as otherwise contemplated by this Agreement, Parent and Merger Sub agree that they shall not, directly or indirectly, knowingly take or cause to be taken any action that reasonably would be expected to materially delay or impair the consummation of the transactions contemplated hereby.

6.12 **No Control of Other Party's Business.** Nothing contained in this Agreement shall give Parent, directly or indirectly, the right to control or direct the Company's or its Subsidiaries' operations prior to the Effective Time, and nothing contained in this Agreement shall give the Company, directly or indirectly, the right to control or direct Parent's or its Subsidiaries' operations prior to the Effective Time. Prior to the Effective Time, each of the Company and Parent shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries' respective operations.

## **ARTICLE VII** **CONDITIONS**

7.1 **Waivable Conditions to the Obligation of Each Party.** The respective obligations of the Company, Parent and Merger Sub to effect the Merger are subject to the satisfaction or waiver of the following conditions:

(a) Prior to the Effective Time, the Company Stockholder Approval shall have been obtained, if required by the NRS;

(b) At or prior to the Offer Closing, no applicable Law and no temporary restraining order, preliminary or permanent injunction or other judgment, order or decree entered, enacted, promulgated, enforced or issued by any court or other Governmental Entity of competent jurisdiction in the United States or any material foreign jurisdiction (collectively, "Judgments") shall be and remain in effect which has the effect of

prohibiting the consummation of the Merger or the other transactions contemplated by this Agreement;

(c) At or prior to the Offer Closing, there shall not be pending or threatened any suit, action or proceeding by any Governmental Entity which challenges or seeks to enjoin the Merger or the other transactions contemplated by this Agreement; and

(d) At or prior to the Offer Closing, Merger Sub shall have previously accepted for payment, and paid for, all shares of Company Common Stock validly tendered and not withdrawn pursuant to the Offer.

## 7.2 **Other Conditions.**

(a) The respective obligations of the Company, Parent and Merger Sub to effect the Merger are subject to the satisfaction (without waiver) of the Minimum Tender Condition.

(b) The obligation of the Company to effect the Merger is subject to the Parent's prepayment of the premium for the D&O Insurance in accordance with Section 6.5. The condition in this Section 7.2(b) is not waivable except by a written instrument waiving this condition signed by all of the directors of the Company serving on the date hereof.

7.3 **Failure of Conditions.** None of the Company, Parent or Merger Sub may rely on the failure of any condition set forth in Section 7.1 or Section 7.2 to be satisfied to excuse performance by such party of its obligations under this Agreement if such failure was caused by such party's failure to act in good faith and in a manner consistent with the terms of this Agreement.

## **ARTICLE VIII** **TERMINATION, AMENDMENT AND WAIVER**

8.1 **Termination.** This Agreement may be terminated and the Offer and the Merger may be abandoned at any time prior to the Effective Time:

(a) by mutual written consent of Parent and the Company;

(b) by either the Parent or the Company:

(i) if the Offer Closing shall not have occurred by February 12, 2010 (the "Outside Date"); provided, however, that the right to terminate this Agreement pursuant to this Section 8.1(b)(i) shall not be available to any party whose failure to perform in all material respects any covenant or agreement contained in this Agreement has been the cause of, or resulted in, the failure of the Offer Closing to have occurred on or by such date; or

(ii) if any Judgment having any of the effects set forth in Section 7.1(b) shall be in effect and shall have become final and nonappealable;

(c) prior to the Offer Closing, by Parent if the Company shall have breached or failed to perform any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (i) would give rise to the failure of a condition set forth in clauses (iv) or (v) of Exhibit A and (ii) has not been waived by Parent and is incapable of being cured, or is not cured, by the Company within twenty (20) calendar days following receipt of written notice of such breach or failure to perform from Parent;

(d) by Parent:

(i) at any time prior to the Offer Closing, upon a Company Adverse Recommendation Change;

(ii) at any time prior to the Effective Time, if the Special Committee changes its recommendation to the Company Board regarding the Merger and the Agreement pursuant to Section 6.3(e); or

(iii) if the Company Board fails to reaffirm publicly its recommendation to the stockholders of the Company to tender their shares of Company Common Stock in the Offer and to approve the Merger within seven (7) days of Parent's written request for such reaffirmation and approval;

(e) prior to the Offer Closing, by Parent if the Company shall have materially breached any of the provisions of Section 6.3;

(f) prior to the Offer Closing, by the Company if (i) Parent or Merger Sub shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (A) would result in the representations and warranties of Parent and Merger Sub contained in this Agreement and in any certificate or other writing delivered by Parent or Merger Sub pursuant hereto that are qualified by materiality or Parent Material Adverse Effect not being true and correct in all respects both as of the date of this Agreement and as of the Offer Closing Date as though made on and as of the Offer Closing Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all respects on and as of such earlier date) or (B) the representations and warranties of Parent and Merger Sub in this Agreement and in any certificate or other writing delivered by Parent or Merger Sub pursuant hereto that are not so qualified not being true and correct in all material respects both as of the date of this Agreement and as of the Offer Closing Date as though made on and as of the Offer Closing Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date); or (ii) Parent and Merger Sub shall not have performed in all material respects all obligations required to be performed by them under this Agreement at or prior to the Closing Date, and in the case of either (i) or (ii) above, such breach or failure to perform is incapable of being cured, or is not cured, by Parent within twenty

(20) calendar days following receipt of written notice of such breach or failure to perform from the Company;

(g) by the Company, at any time prior to Offer Closing, to accept and enter into a binding agreement with respect to a Superior Proposal; provided, however, that for the termination of this Agreement pursuant to this subsection (g) to be effected, the Company shall have complied with the provisions of Section 6.3(a) and the Company shall have paid the Company Termination Fee and otherwise complied with its obligations under Section 8.2(c); or

(h) by the Company if (1) Merger Sub fails to commence the Offer in violation of Section 1.1 hereof and such breach is not cured within twenty (20) calendar days following receipt of written notice of such breach from the Company, (2) the Offer shall have expired or been terminated without Merger Sub having purchased any shares of Company Common Stock pursuant thereto or (3) Merger Sub, in violation of the terms of this Agreement, fails to accept for payment and to purchase validly tendered shares of Company Common Stock pursuant to the Offer; provided, however, that the right to terminate this Agreement pursuant to clause (2) of this Section 8.1(h) shall not be available if the Company's failure to fulfill any covenant or agreement contained in this Agreement has been the cause of, or resulted in, the Offer having expired or terminated without Merger Sub having purchased any shares of Company Common Stock pursuant thereto.

## 8.2 **Effect of Termination.**

(a) In the event of the termination of this Agreement by either Parent or the Company pursuant to Section 8.1 hereof, this Agreement shall forthwith be terminated and have no further effect, the obligations of the parties hereunder shall terminate, and there shall be no liability on the part of any party hereto with respect thereto, except that (i) the provisions of this Section 8.2 and Article IX shall survive the termination of this Agreement and (ii) nothing herein shall relieve any party from liability or damages for fraud or any willful misrepresentation or for any willful breach hereof.

(b) Except as provided in this Section 8.2, all fees and expenses incurred in connection with the Offer, the Merger, this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such fees or expenses, whether or not the Offer or the Merger is consummated.

(c) (i) In the event that: (v) (A) prior to the Offer Closing, a Company Takeover Proposal shall have been made to the Company and such Company Takeover Proposal becomes publicly known or shall have been made directly to the stockholders of the Company generally and, in either case, such Company Takeover Proposal shall not have been publicly withdrawn at least two (2) business days prior to the Offer Closing or any Person shall have publicly announced an intention (whether or not conditional) to make a Company Takeover Proposal, (B) this Agreement is terminated by Parent pursuant to Section 8.1(c) or Section 8.1(e) and (C) within twelve (12) months after such

termination, the Company enters into a definitive agreement to consummate a Company Takeover Proposal or consummates a Company Takeover Proposal; or (w) (A) this Agreement is terminated by Parent pursuant to Section 8.1(d)(i) and (B) such Company Adverse Recommendation Change was approved by a majority of the directors of the Company who are disinterested and independent with respect to the transactions contemplated hereby; or (x) this Agreement is terminated by Parent pursuant to Section 8.1(d)(ii); or (y) (A) this Agreement is terminated by Parent pursuant to Section 8.1(d)(iii) and (B) such failure to reaffirm the recommendation of the Company Board was due to the vote of the directors of the Company who are disinterested and independent with respect to the transactions contemplated hereby; or (z) this Agreement is terminated by the Company pursuant to Section 8.1(g), then the Company shall pay Parent a fee equal to \$225,000 (the “Company Termination Fee”) by wire transfer of same-day funds on the date of termination of this Agreement (except that in the case of termination pursuant to clause (w) or (x) above, the Company shall pay Parent the Company Termination Fee upon the date of execution of such definitive agreement or, if earlier, consummation of such transaction). The Parties acknowledge and hereby agree that in no event shall the Company be required to pay the Company Termination Fee on more than one occasion.

(ii) In the event that this Agreement is terminated by Parent pursuant to Section 8.1(c) or by the Company pursuant to Section 8.1(f) (and in the case of termination by Parent no amount is payable by the Company pursuant to Section 8.2(c)), then the party not terminating this Agreement shall pay the party terminating this Agreement a fee equal to such party’s out-of-pocket fees and expenses incurred in connection with the Merger, this Agreement and the transactions contemplated hereby, but not in excess of \$100,000, by wire transfer of same-day funds three (3) business days after the date of such termination of this Agreement as referred to in this sentence; provided, that the foregoing shall not limit or be deemed to limit any liability of the party not terminating this Agreement or damages or other remedy to which the party terminating this Agreement may be entitled as a result of any willful breach of this Agreement by the party not terminating this Agreement; and provided further, that (A) the Company will not be obligated to make a payment pursuant to this Section 8.2(c)(ii) if the Company has paid or is required to pay the Company Termination Fee set forth in Section 8.2(c)(i), and any fees paid by the Company under this Section 8.2(c)(ii) will be credited against any such Company Termination Fee to the extent that such fee subsequently becomes payable by the Company and (B) Parent will not be obligated to make a payment pursuant to this Section 8.2(c)(ii) if the D&O Insurance is not commercially available to Parent prior to the Offer Closing.

(iii) The Company acknowledges that the agreements contained in this Section 8.2(c) are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Parent would not enter into this Agreement; accordingly, if the Company fails promptly to pay the amount(s) due pursuant to this Section 8.2(c), and, to obtain such payment, Parent commences a

suit which results in a judgment against the Company for the amount(s) due pursuant to this Section 8.2(c), the Company shall pay to Parent its out-of-pocket costs and expenses (including attorneys' fees and expenses) in connection with such suit, together with interest on such amount(s) at Prime Rate in effect on the date such payment was required to be made.

8.3 **Amendments.** Subject to compliance with applicable Law and the other provisions of this Agreement, this Agreement may be amended by the parties, by action taken or authorized by their respective boards of directors, at any time before or after approval by the stockholders of the Company of the matters presented in connection with the Merger; provided, however, that after any approval of the transactions contemplated by this Agreement by the stockholders of the Company, there may not be, without further approval of the stockholders of the Company, any amendment of this Agreement that changes the amount or the form of the consideration to be delivered under this Agreement to the holders of Company Common Stock or which otherwise expressly requires, pursuant to applicable Law, the further approval of such stockholders. No amendment shall be made to this Agreement after the Effective Time. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

8.4 **Waiver.** Subject to the other provisions of this Agreement, at any time prior to the Effective Time, whether before or after the Company Stockholders' Meeting, any party hereto may (i) extend the time for the performance of any of the covenants, obligations or other acts of any other party hereto or (ii) waive any inaccuracy of any representations or warranties or compliance with any of the agreements, covenants or conditions of any other party or with any conditions to its own obligations. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party by its duly-authorized officer. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights. The waiver of any such right with respect to particular facts and circumstances shall not be deemed a waiver with respect to any other facts and circumstances, and each such right shall be deemed an ongoing right that may be asserted at any time and from time to time.

## **ARTICLE IX** **GENERAL PROVISIONS**

9.1 **Nonsurvival of Representations and Warranties.** None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time. This Section 9.1 shall not limit the survival of any covenant or agreement of the parties in the Agreement which by its terms contemplates performance after the Effective Time.

9.2 **Notices.** All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be deemed given if delivered personally, sent via electronic mail (receipt confirmed), facsimile (receipt confirmed) or sent by a nationally-recognized overnight courier (providing proof of delivery) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to the Company to:

United Fuel & Energy Corporation  
1800 W. Katella Ave., Suite 102  
Orange, California 92863  
Fax No.: (714) 633-3405  
Attn: Joseph Juliano, President

with a copy to:

Cox Smith Matthews Incorporated  
112 E. Pecan Street, Suite 1800  
San Antonio, Texas 78205  
Fax No.: (210) 226-8395  
Attn: Wilhelm Liebmann, Esq.

and with a copy to:

Fulbright & Jaworski L.L.P.  
1301 McKinney, Suite 5100  
Houston, Texas 77701  
Attention: Gene G. Lewis  
Phone: (713) 651-5151  
Fax: (713) 651-5246

(b) if to Parent or Merger Sub, to it at:

Southern Counties Oil Co.  
1800 W. Katella, Suite 400  
Orange, CA 92863-4159  
Fax No.: (714) 922-7230  
Attn: Robert Bollar, Esq.

with a copy to:

Rutan & Tucker, LLP  
611 Anton Blvd., Suite 1400  
Costa Mesa, CA 92626  
Fax No.: (714) 546-9035  
Attn: Larry A. Cerutti, Esq.

9.3 **Interpretation.** When a reference is made in this Agreement to an Article, Section or Exhibit, such reference shall be to an Article or Section of, or an Exhibit to, this Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined

meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

9.4 **Counterparts.** This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. This Agreement may be validly executed and delivered by facsimile or other electronic transmission.

9.5 **Entire Agreement; No Third-Party Beneficiaries.** This Agreement (a) constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement and (b) except for the provisions of Section 6.5, is not intended to confer, nor shall it confer, upon any Person other than the parties hereto any rights or remedies or benefits of any nature whatsoever.

9.6 **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Nevada, regardless of the laws that might otherwise govern under applicable principles of conflict of laws thereof.

9.7 **Assignment.** Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of Law or otherwise by any of the parties hereto without the prior written consent of the other parties. Any assignment in violation of the preceding sentence shall be void. Subject to the preceding two sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

9.8 **Consent to Jurisdiction.** Each of the parties hereto (a) consents to submit itself to the personal jurisdiction of any federal court located in the State of Nevada or any Nevada state court for the purpose of any action or proceeding arising out of this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (c) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than a federal court located in the State of Nevada or a Nevada state court.

9.9 **Headings, Etc.** The headings and table of contents contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The disclosure of any matter in the Company Disclosure Letter shall expressly

not be deemed to constitute an admission by the Company or Parent, respectively, or to otherwise imply that any such matter is material for the purpose of this Agreement.

9.10 **Severability.** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, insofar as the foregoing can be accomplished without materially affecting the economic benefits anticipated by the parties to this Agreement. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

9.11 **Failure or Indulgence Not Waiver; Remedies Cumulative.** No failure or delay on the part of any party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

9.12 **Waiver of Jury Trial.** EACH OF PARENT, MERGER SUB AND THE COMPANY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF PARENT, MERGER SUB OR THE COMPANY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT.

9.13 **Specific Performance.** The parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any federal court located in the State of Nevada or in Nevada state court, this being in addition to any other remedy to which they are entitled at law or in equity.

9.14 **Certain Definitions.**

(a) “Representatives” shall mean the officers, directors, employees, auditors, attorneys, financial advisors, the lenders and other agents to each of Parent and the Company; for purposes of clarification, the Special Committee shall be considered a Representative of the Company.

(b) For purposes of this Agreement, the term “Affiliate” shall have the same meaning as set forth in Rule 12b-2 promulgated under the Securities Exchange Act of 1934, as amended, and the term “Person” shall mean any individual, corporation,

partnership (general or limited), limited liability company, limited liability partnership, trust, joint venture, joint-stock company, syndicate, association, entity, unincorporated organization or government or any political subdivision, agency or instrumentality thereof.

(c) For purposes of this Agreement, the phrase “Company Material Adverse Effect” means any change, effect, event, occurrence, state of facts or development which individually or in the aggregate (i) results in any change or effect that is materially adverse to the business, financial condition, properties, assets, liabilities (contingent or otherwise) or results of operations of the Company and its Subsidiaries, taken as a whole, or (ii) prevents or materially impedes, interferes with, hinders or delays the consummation by the Company of the Merger or the other transactions contemplated by this Agreement; provided that none of the following shall be deemed, either alone or in combination, to constitute a Company Material Adverse Effect: (A) any change relating to the economy or securities markets in general, (B) any adverse change, effect, event, occurrence, state of facts or development attributable to conditions affecting the industry in which the Company participates, including any changes in prices for oil, gas, condensate and other gaseous and liquid hydrocarbons or any combination thereof or any substances extracted or refined from hydrocarbons, (C) any failure, in and of itself, by the Company to meet any internal or published projections, forecasts or revenue or earnings predictions for any period ending on or after the date of this Agreement (provided that the underlying causes of such failure may be considered in determining whether a Company Material Adverse Effect has occurred), (D) the effect of any change in any applicable Law or (E) any change, effect, event, occurrence, state of facts or development resulting from any action required pursuant to the terms of this Agreement; except, in the cases of clauses (A), (B) or (D) above, if such change, effect, event, occurrence, state of facts or development disproportionately affects the Company and its Subsidiaries as compared to other participants in the industry in which the Company participates.

(d) “Parent Material Adverse Effect” means any change, effect, event, occurrence, state of facts or development which individually or in the aggregate prevents or materially impedes, interferes with, hinders or delays the consummation by Parent of the Merger or the other transactions contemplated by this Agreement.

(e) For purposes of this Agreement, a “Subsidiary” of any Person means another Person (i) an amount of the voting securities, other voting rights or voting partnership interests of which that is sufficient to elect at least a majority of its board of directors or other governing body is directly or indirectly owned or controlled by such first Person or by any one or more of its Subsidiaries, or by such first Person and one or more of its Subsidiaries (or, if there are no such voting interests, 50% or more of the equity interests of which is owned directly or indirectly by such first Person) or (ii) of which such first Person or any other Subsidiary of such first Person is a general partner (excluding partnerships, the general partnership interests of which held by such first Person and any Subsidiary of such first Person do not have a majority of the voting interests in such partnership).

IN WITNESS WHEREOF, Southern Counties Oil Co., a California Limited Partnership, Goldstream, Inc. and United Fuel & Energy Corporation have each caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

SOUTHERN COUNTIES OIL CO., A  
CALIFORNIA LIMITED PARTNERSHIP

By:  /s/ Frank P. Greinke  
Name:  Frank P. Greinke  
Title:  CEO of the GP

GOLDSTREAM, INC.

By:  /s/ Frank P. Greinke  
Name:  Frank P. Greinke  
Title  President

UNITED FUEL & ENERGY CORPORATION

By:  /s/ Joe Juliano  
Name:  Joe Juliano  
Title  President and COO

## **EXHIBIT A**

### **CONDITIONS OF THE OFFER**

Notwithstanding any other provisions of the Offer, Merger Sub shall not be required to, and Parent shall not be required to cause Merger Sub to, accept for payment or pay for any tendered shares of Company Common Stock unless:

(i) There shall have been validly tendered and not validly withdrawn prior to the expiration date for the Offer (as it may have been extended or re-extended pursuant to the Agreement, the “Expiration Date”) that number of shares of Company Common Stock other than the Excluded Shares, that, when added to that number of shares of Company Common Stock other than the Excluded Shares purchased (i.e., a purchase agreement has been executed and the purchase transaction closed), other than through the Offer, by Parent or Merger Sub after the execution of this Agreement and prior to the commencement of the Offer, represents at least a majority of the total number of shares of Company Common Stock other than the Excluded Shares outstanding on the date of this Agreement (the “Minimum Tender Condition”);

(ii) No applicable Law and no permanent injunction or other judgment, order or decree entered, enacted, promulgated, enforced or issued by any court or other Governmental Entity of competent jurisdiction in the United States or any material foreign jurisdiction shall be and remain in effect which has the effect of prohibiting the consummation of the Offer, the Merger or the other transactions contemplated by the Agreement;

(iii) There shall not be existing any temporary restraining order, preliminary injunction, or pending or threatened suit, action or proceeding by any Governmental Entity which challenges or seeks to prohibit or enjoin the Offer Closing, the Merger or the other transactions contemplated by the Agreement;

(iv) (A) The representations and warranties of the Company contained in the Agreement and in any certificate or other writing delivered by the Company pursuant thereto that are qualified by materiality or Company Material Adverse Effect shall be true and correct in all respects both as of the date of the Agreement and as of the Offer Closing Date as though made on and as of the Offer Closing Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all respects on and as of such earlier date) and (B) the representations and warranties of the Company in the Agreement and in any certificate or other writing delivered by the Company pursuant thereto that are not so qualified shall be true and correct in all material respects both as of the date of the Agreement and as of the Offer Closing Date as though made on and as of the Offer Closing Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date);

(v) The Company shall have performed in all material respects all obligations required to be performed by it under the Agreement at or prior to the Offer Closing Date;

(vi) There shall not be pending any suit, action or proceeding by any Governmental Entity seeking to prohibit or impose any material limitations on Parent's ownership of the Company or the operation of all or a material portion of Parent's or the Company's businesses or assets (whether held directly or through Subsidiaries), or to compel Parent or the Company or any of their respective Subsidiaries to dispose of or hold separate any material portion of the business or assets of Parent or the Company (whether held directly or through Subsidiaries);

(vii) Since the date of the Agreement there shall not have been any occurrence, event, change, effect or development that, individually or in the aggregate, has had or is reasonably expected to have a Company Material Adverse Effect; and

(viii) the Company and Parent shall not have reached an agreement that the Offer or the Agreement be terminated, and the Agreement shall not have been terminated in accordance with its terms.

The foregoing conditions shall be in addition to, and not a limitation of, the rights of Parent and Merger Sub to extend, terminate and/or modify the Offer pursuant to the terms of the Agreement.

The foregoing conditions are for the benefit of Parent and Merger Sub, may be asserted by Parent or Merger Sub regardless of the circumstances giving rise to any such conditions and may be waived by Parent or Merger Sub in whole or in part at any time and from time to time in their sole discretion (except for the Minimum Tender Condition which is not waivable), in each case, subject to the terms of the Agreement and the applicable rules and regulations of the NRS. The failure by Parent or Merger Sub at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

**APPENDIX B**

**FORM OF INDEMNIFICATION AGREEMENT**

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## FORM OF DIRECTOR INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this “*Agreement*”) dated the \_\_\_\_ day of October 2007, by and between United Fuel & Energy Corporation, a Nevada corporation (the “*Company*”), and \_\_\_\_\_, an individual (“*Indemnitee*”).

### RECITALS

A. Competent and experienced persons are reluctant to serve or to continue to serve as directors and officers of corporations or in other capacities unless they are provided with adequate protection through insurance or indemnification (or both) against claims against them arising out of their service and activities on behalf of the corporation.

B. The current uncertainties relating to the availability of adequate insurance have increased the difficulty for corporations of attracting and retaining competent and experienced persons to serve in such capacity.

C. The Board of Directors of the Company (the “*Board of Directors*”) has determined that the continuation of present trends in litigation will make it more difficult to attract and retain competent and experienced persons to serve as directors and officers of the Company, that this situation is detrimental to the best interests of the Company’s stockholders and that the Company should act to assure such persons that there will be increased certainty of adequate protection in the future.

D. As a supplement to and in the furtherance of the Company’s Articles of Incorporation, as amended (the “*Articles*”), and Bylaws, as amended (the “*Bylaws*”), it is reasonable, prudent, desirable and necessary for the Company contractually to obligate itself to indemnify, and to pay in advance expenses on behalf of directors to the fullest extent permitted by law so that they will serve or continue to serve the Company free from concern that they will not be so indemnified and that their expenses will not be so paid in advance;

E. This Agreement is not a substitute for, nor does it diminish or abrogate any rights of Indemnitee under, the Articles and the Bylaws or any resolutions adopted pursuant thereto (including any contractual rights of Indemnitee that may exist).

F. Indemnitee is a director of the Company and his willingness to continue to serve in such capacity is predicated, in substantial part, upon the Company’s willingness to indemnify him to the fullest extent permitted by the laws of the State of Nevada and upon the other undertakings set forth in this Agreement.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the premises and covenants contained herein, the Company and Indemnitee hereby agree as follows:

## ARTICLE 1 CERTAIN DEFINITIONS

Capitalized terms used but not otherwise defined in this Agreement have the meanings set forth below:

**“Corporate Status”** means the status of a person who is or was a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of the Company or of any other Enterprise which such person is or was serving at the request of the Company. In addition to any service at the actual request of the Company, Indemnitee will be deemed, for purposes of this Agreement, to be serving or to have served at the request of the Company as a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another Enterprise if Indemnitee is or was serving as a director, officer, employee, partner, member, manager, fiduciary, trustee or agent of such Enterprise and (i) such Enterprise is or at the time of such service was a Controlled Affiliate, (ii) such Enterprise is or at the time of such service was an employee benefit plan (or related trust) sponsored on maintained by the Company or a Controlled Affiliate or (iii) the Company or a Controlled Affiliate directly or indirectly caused Indemnitee to be nominated, elected, appointed, designated, employed, engaged or selected to serve in such capacity.

**“Controlled Affiliate”** means any corporation, limited liability company, partnership, joint venture, trust or other Enterprise, whether or not for profit, that is directly or indirectly controlled by the Company. For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of an Enterprise, whether through the ownership of voting securities, through other voting rights, by contract or otherwise; *provided, however*, that direct or indirect beneficial ownership of capital stock or other interests in an Enterprise entitling the holder to cast 30% or more of the total number of votes generally entitled to be cast in the election of directors (or persons performing comparable functions) of such Enterprise will be deemed to constitute “control” for purposes of this definition.

**“Disinterested Director”** means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

**“Enterprise”** means the Company and any other corporation, partnership, limited liability company, joint venture, employee benefit plan, trust or other entity or other enterprise of which Indemnitee is or was serving at the request of the Company in a Corporate Status.

**“Expenses”** means all attorney’s fees, disbursements and retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, fax transmission charges, secretarial services, delivery service fees and all other disbursements or expenses paid or incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding, or in connection with seeking indemnification under this Agreement. Expenses will also include Expenses paid or incurred in connection with any appeal resulting from any Proceeding, including the premium, security for and other costs

relating to any appeal bond or its equivalent. Expenses, however, will not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

**“Independent Counsel”** means an attorney or firm of attorneys that is experienced in matters of corporation law and neither currently is, nor in the past five (5) years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement and/or the indemnification provisions of the Articles or Bylaws, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” does not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

**“Losses”** means any loss, liability, judgments, damages, amounts paid in settlement, fines (including excise taxes and penalties assessed with respect to employee benefit plans), penalties (whether civil, criminal or otherwise) and all interest, assessments and other charges paid or payable in connection with or in respect of any of the foregoing.

**“Proceeding”** means any threatened, pending or completed action, suit, claim, demand, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, including any and all appeals, whether brought by or in the right of the Company or otherwise, whether civil, criminal, administrative or investigative, whether formal or informal, and in each case whether or not commenced prior to the date of this Agreement, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of or relating to Indemnitee’s Corporate Status and by reason of or relating to either (i) any action or alleged action taken by Indemnitee (or failure or alleged failure to act) or of any action or alleged action (or failure or alleged failure to act) on Indemnitee’s part, while acting in his Corporate Status or (ii) the fact that Indemnitee is or was serving at the request of the Company as director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another Enterprise, in each case whether or not serving in such capacity at the time any Loss or Expense is paid or incurred for which indemnification or advancement of Expenses can be provided under this Agreement, except one initiated by Indemnitee to enforce his rights under this Agreement. For purposes of this definition, the term “threatened” will be deemed to include Indemnitee’s good faith belief that a claim or other assertion may lead to institution of a Proceeding.

References to **“serving at the request of the Company”** include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to any employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan will be deemed to have acted in a manner **“not opposed to the best interests of the Company”** as referred to under applicable law or in this Agreement.

**ARTICLE 2**  
**SERVICES TO THE COMPANY**

**2.1 Services to the Company.** Indemnitee agrees to serve as a director of the Company. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law), in which event the Company will have no obligation under this Agreement to continue Indemnitee in such position. This Agreement will not be construed as giving Indemnitee any right to be retained in the employ of the Company (or any other Enterprise).

**ARTICLE 3**  
**INDEMNIFICATION**

**3.1 Company Indemnification.** Except as otherwise provided in this Article 3, if Indemnitee was, is or becomes a party to, or was or is threatened to be made a party to, or was or is otherwise involved in, any Proceeding, the Company will indemnify and hold harmless Indemnitee to the fullest extent permitted by the Articles, Bylaws and applicable law, as the same exists or may hereafter be amended, interpreted or replaced (but in the case of any such amendment, interpretation or replacement, only to the extent that such amendment, interpretation or replacement permits the Company to provide broader indemnification rights than were permitted prior thereto), against any and all Expenses and Losses, and any federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any payments under this Agreement, that are actually and reasonably paid or incurred by Indemnitee in connection with such Proceeding. For purposes of this Agreement, the meaning of the phrase “*to the fullest extent permitted by law*” will include to the fullest extent permitted by the Nevada Revised Statutes, as amended (the “*NRS*”), with respect to such matters.

**3.2 Mandatory Indemnification if Indemnitee is Wholly or Partly Successful.** Notwithstanding any other provision of this Agreement (other than Section 6.9), to the extent that Indemnitee has been successful, on the merits or otherwise, in defense of any Proceeding or any part thereof, the Company will indemnify Indemnitee against all Expenses that are actually and reasonably paid or incurred by Indemnitee in connection therewith. If Indemnitee is not wholly successful in such Proceeding, but is successful, on the merits or otherwise, as to one or more but fewer than all claims, issues or matters in such Proceeding, the Company will indemnify and hold harmless Indemnitee against all Expenses paid or incurred by Indemnitee in connection with each successfully resolved claim, issue or matter on which Indemnitee was successful. For purposes of this Section 3.2, the termination of any Proceeding, or any claim, issue or matter in such Proceeding, by dismissal with or without prejudice will be deemed to be a successful result as to such Proceeding, claim, issue or matter.

**3.3 Indemnification for Expenses of a Witness.** Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, the Company will indemnify Indemnitee against all Expenses actually and reasonably paid or incurred by Indemnitee on his behalf in connection therewith.

**3.4 Exclusions.** Notwithstanding any other provision of this Agreement, the Company will not be obligated under this Agreement to provide indemnification in connection with the following:

(a) Any Proceeding (or part of any Proceeding) initiated or brought voluntarily by Indemnitee against the Company or its directors, officers, employees or other indemnities, unless the Board of Directors has authorized or consented to the initiation of the Proceeding (or such part of any Proceeding); *provided, however*, that nothing in this Section 3.4(a) shall limit the right of Indemnitee to be indemnified under Section 8.4.

(b) For an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or any similar successor statute.

#### **ARTICLE 4 ADVANCEMENT OF EXPENSES**

**4.1 Expense Advances.** Except as set forth in Section 4.2, the Company will, if requested by Indemnitee, advance, to the fullest extent permitted by law, to Indemnitee (hereinafter an “*Expense Advance*”) any and all Expenses actually and reasonably paid or incurred by Indemnitee in connection with any Proceeding (whether prior to or after its final disposition). Indemnitee’s right to each Expense Advance will not be subject to the satisfaction of any standard of conduct and will be made without regard to Indemnitee’s ultimate entitlement to indemnification under the other provisions of this Agreement, or under provisions of the Articles or Bylaws or otherwise. Each Expense Advance will be unsecured and interest free and will be made by the Company without regard to Indemnitee’s ability to repay the Expense Advance; *provided, however*, that, if applicable law requires, an Expense Advance will be made only upon delivery to the Company of an undertaking (hereinafter an “*Undertaking*”), by or on behalf of Indemnitee, to repay such Expense Advance if it is ultimately determined, by final decision by a court or arbitrator, as applicable, from which there is no further right to appeal, that Indemnitee is not entitled to be indemnified for such Expenses under the Articles, Bylaws, the NRS, this Agreement or otherwise. An Expense eligible for an Expense Advance will include any and all reasonable Expenses incurred pursuing an action to enforce the right of advancement provided for in this Article 4, including Expenses incurred preparing and forwarding statements to the Company to support the Expense Advances claimed.

**4.2 Exclusions.** Indemnitee will not be entitled to any Expense Advance in connection with any of the matters for which indemnity is excluded pursuant to Section 3.4.

**4.3 Timing.** An Expense Advance pursuant to Section 4.1 will be made within five business days after the receipt by the Company of a written statement or statements from Indemnitee requesting such Expense Advance (which statement or statements will include, if requested by the Company, reasonable detail underlying the Expenses for which the Expense Advance is requested), whether such request is made prior to or after final disposition of such Proceeding. Such request must be accompanied by or preceded by the Undertaking, if then required by the NRS or any other applicable law.

**ARTICLE 5**  
**CONTRIBUTION IN THE EVENT OF JOINT LIABILITY**

**5.1 Contribution by Company.** To the fullest extent permitted by law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, will contribute to the amount of Expenses and Losses actually and reasonably incurred or paid by Indemnitee in connection with any Proceeding in proportion to the relative benefits received by the Company and all officers, directors and employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such Proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction from which such Proceeding arose; *provided, however*, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors and employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such Proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the events that resulted in such Expenses and Losses, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Company and all officers, directors and employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such Proceeding), on the one hand, and Indemnitee, on the other hand, will be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary, and the degree to which their conduct was active or passive.

**5.2 Indemnification for Contribution Claims by Others.** To the fullest extent permitted by law, the Company will fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by other officers, directors or employees of the Company who may be jointly liable with Indemnitee for any Loss or Expense arising from a Proceeding.

**ARTICLE 6**  
**PROCEDURES AND PRESUMPTIONS FOR THE**  
**DETERMINATION OF ENTITLEMENT TO INDEMNIFICATION**

**6.1 Notification of Claims; Request for Indemnification.** Indemnitee agrees to notify promptly the Company in writing of any claim made against Indemnitee for which indemnification will or could be sought under this Agreement; *provided, however*, that a delay in giving such notice will not deprive Indemnitee of any right to be indemnified under this Agreement unless, and then only to the extent that, the Company did not otherwise learn of the Proceeding and such delay is materially prejudicial to the Company's ability to defend such Proceeding; and, *provided, further*, that notice will be deemed to have been given without any action on the part of Indemnitee in the event the Company is a party to the same Proceeding. The omission to notify the Company will not relieve the Company from any liability for indemnification which it may have to Indemnitee otherwise than under this Agreement. Indemnitee may deliver to the Company a written request to have the Company indemnify and hold harmless Indemnitee in accordance with this Agreement. Subject to Section 6.9, such request may be delivered from time to time and at such time(s) as Indemnitee deems appropriate

in his sole discretion. Following such a written request for indemnification, Indemnitee's entitlement to indemnification shall be determined according to Section 6.2. The Secretary of the Company will, promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that Indemnitee has requested indemnification. The Company will be entitled to participate in any Proceeding at its own expense.

**6.2 Determination of Right to Indemnification.** Upon written request by Indemnitee for indemnification pursuant to Section 6.1 hereof with respect to any Proceeding, a determination, if, but only if, required by applicable law, with respect to Indemnitee's entitlement thereto will be made by one of the following, at the election of Indemnitee: (1) so long as there are Disinterested Directors with respect to such Proceeding, a majority vote of the Disinterested Directors, even though less than a quorum of the Board of Directors, (2) so long as there are Disinterested Directors with respect to such Proceeding, a committee of such Disinterested Directors designated by a majority vote of such Disinterested Directors, even though less than a quorum of the Board of Directors or (3) Independent Counsel in a written opinion delivered to the Board of Directors, a copy of which will also be delivered to Indemnitee. The election by Indemnitee to use a particular person, persons or entity to make such determination is to be included in the written request for indemnification submitted by Indemnitee (and if no election is made in the request it will be assumed that Indemnitee has elected the Independent Counsel to make such determination). The person, persons or entity chosen to make a determination under this Agreement of the Indemnitee's entitlement to indemnification will act reasonably and in good faith in making such determination.

**6.3 Selection of Independent Counsel.** If the determination of entitlement to indemnification pursuant to Section 6.2 will be made by an Independent Counsel, the Independent Counsel will be selected as provided in this Section 6.3. The Independent Counsel will be selected by Indemnitee (unless Indemnitee requests that such selection be made by the Board of Directors, in which event the immediately following sentence will apply) and Indemnitee will give written notice to the Company advising it of the identity of the Independent Counsel so selected. If the Independent Counsel is selected by the Board of Directors, the Company will give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten days after such written notice of selection is given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; *provided, however*, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in this Agreement, and the objection will set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected will act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 30 days after submission by Indemnitee of a written request for indemnification pursuant to Section 6.1, no Independent Counsel is selected, or an Independent Counsel for which an objection thereto has been properly made remains unresolved, either the Company or Indemnitee may petition the appropriate court of the State of Nevada or other court of competent jurisdiction for resolution of any objection which has been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court may

designate, and the person with respect to whom all objections are so resolved or the person so appointed will act as Independent Counsel under Section 6.2. The Company will pay any and all fees and expenses incurred by such Independent Counsel in connection with acting pursuant to Section 6.2 hereof, and the Company will pay all fees and expenses incident to the procedures of this Section 6.3, regardless of the manner in which such Independent Counsel was selected or appointed.

**6.4 Burden of Proof.** In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination will presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption will have the burden of proof and the burden of persuasion, by clear and convincing evidence. In making a determination with respect to entitlement to indemnification hereunder which under this Agreement, the Articles, Bylaws or applicable law requires a determination of Indemnitee's good faith and/or whether Indemnitee acted in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company, the person, persons or entity making such determination will presume that Indemnitee has at all times acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption will have the burden of proof and the burden of persuasion, by clear and convincing evidence. Indemnitee will be deemed to have acted in good faith if Indemnitee's action with respect to a particular Enterprise is based on the records or books of account of such Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of such Enterprise in the course of their duties, or on the advice of legal counsel for such Enterprise or on information or records given or reports made to such Enterprise by an independent certified public accountant or by an appraiser or other expert selected by such Enterprise; *provided, however* this sentence will not be deemed to limit in any way the other circumstances in which Indemnitee may be deemed to have met such standard of conduct. In addition, the knowledge and/or actions, or failure to act, of any other director, officer, agent or employee of such Enterprise will not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

**6.5 No Presumption in Absence of a Determination or As Result of an Adverse Determination; Presumption Regarding Success.** Neither the failure of any person, persons or entity chosen to make a determination as to whether Indemnitee has met any particular standard of conduct or had any particular belief to make such determination, nor an actual determination by such person, persons or entity that Indemnitee has not met such standard of conduct or did not have such belief, prior to or after the commencement of legal proceedings by Indemnitee to secure a judicial determination that Indemnitee should be indemnified under this Agreement under applicable law, will be a defense to Indemnitee's claim or create a presumption that Indemnitee has not met any particular standard of conduct or did not have any particular belief. In addition, the termination of any Proceeding by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere, or its equivalent, will not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification is not permitted by this Agreement or applicable law. In the event that any Proceeding to which Indemnitee is a party is resolved in any manner other than by final adverse judgment (as to which all rights of appeal therefrom have been exhausted or lapsed) against Indemnitee (including, without limitation, settlement of such Proceeding with or without payment of money or other consideration) it will

be presumed that Indemnitee has been successful on the merits or otherwise in such Proceeding. Anyone seeking to overcome this presumption will have the burden of proof and the burden of persuasion, by clear and convincing evidence.

**6.6 Timing of Determination.** The Company will use its reasonable best efforts to cause any determination required to be made pursuant to Section 6.2 to be made as promptly as practicable after Indemnitee has submitted a written request for indemnification pursuant to Section 6.1. If the person, persons or entity chosen to make a determination does not make such determination within 30 days after the later of the date (a) the Company receives Indemnitee's request for indemnification pursuant to Section 6.1 and (b) on which an Independent Counsel is selected pursuant to Section 6.3, if applicable (and all objections to such person, if any, have been resolved), the requisite determination of entitlement to indemnification will be deemed to have been made and Indemnitee will be entitled to such indemnification, so long as (i) Indemnitee has fulfilled his obligations pursuant to Section 6.8 and (ii) such indemnification is not prohibited under applicable law; *provided, however*, that such 30 day period may be extended for a reasonable time, not to exceed an additional 15 days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining of or evaluating of documentation and/or information relating thereto.

**6.7 Timing of Payments.** All payments of Expenses, including any Expense Advance, and other amounts by the Company to the Indemnitee pursuant to this Agreement will be made as soon as practicable after a written request or demand therefor by Indemnitee is presented to the Company, but in no event later than thirty (30) days after (i) such demand is presented or (ii) such later date as a determination of entitlement to indemnification is made in accordance with Section 6.6, if applicable; *provided, however*, that an Expense Advance will be made within the time provided in Section 4.3 hereof.

**6.8 Cooperation.** Indemnitee will cooperate with the person, persons or entity making a determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity, upon reasonable advance request, any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making such determination will be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company will indemnify Indemnitee therefor and will hold Indemnitee harmless therefrom.

**6.9 Time for Submission of Request.** Indemnitee will be required to submit any request for Indemnification pursuant to this Article 6 within a reasonable time, not to exceed two years, after any judgment, order, settlement, dismissal, arbitration award, conviction, acceptance of a plea of nolo contendere (or its equivalent) or other full or partial final determination or disposition of the Proceeding (with the latest date of the occurrence of any such event to be considered the commencement of the two year period).

## **ARTICLE 7 LIABILITY INSURANCE**

**7.1 Company Insurance.** Subject to Section 7.3, the Company will obtain and maintain a policy or policies of insurance with one or more reputable insurance companies providing Indemnitee with coverage in such amount as will be determined by the Board of Directors for Losses and Expenses paid or incurred by Indemnitee as a result of acts or omissions of Indemnitee in his Corporate Status, and to ensure the Company's performance of its indemnification obligations under this Agreement; *provided, however*, in all policies of director and officer liability insurance obtained by the Company, Indemnitee will be named as an insured party in such manner as to provide Indemnitee with the same rights and benefits as are afforded to the most favorably insured directors or officers, as applicable, of the Company under such policies. Any reductions to the amount of director and officer liability insurance coverage maintained by the Company as of the date hereof will be subject to the approval of the Board of Directors.

**7.2 Notice to Insurers.** If, at the time of receipt by the Company of a notice from any source of a Proceeding as to which Indemnitee is a party or participant, the Company will give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies, and the Company will provide Indemnitee with a copy of such notice and copies of all subsequent correspondence between the Company and such insurers related thereto. The Company will thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

**7.3 Insurance Not Required.** Notwithstanding Section 7.1, the Company will have no obligation to obtain or maintain the insurance contemplated by Section 7.1 if the Board of Directors determines in good faith that such insurance is not reasonably available, if the premium costs for such insurance are disproportionately high compared to the amount of coverage provided, or if the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit. The Company will promptly notify Indemnitee of any such determination not to provide insurance coverage.

## **ARTICLE 8 REMEDIES OF INDEMNITEE**

**8.1 Action by Indemnitee.** In the event that (i) a determination is made pursuant to Article 6 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) an Expense Advance is not timely made pursuant to Section 4.3 of this Agreement, (iii) no determination of entitlement to indemnification is made within the applicable time periods specified in Section 6.6 or (iv) payment of indemnified amounts is not made within the applicable time periods specified in Section 6.7, Indemnitee will be entitled to an adjudication in an appropriate court of the State of Nevada, or in any other court of competent jurisdiction, of his entitlement to such indemnification or payment of an Expense Advance. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The provisions of Nevada law (without regard to its conflict of laws

rules) will apply to any such arbitration. The Company will not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

**8.2 De Novo Review if Prior Adverse Determination.** In the event that a determination is made pursuant to Article 6 that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Article 8 will be conducted in all respects as a *de novo* trial or arbitration, as applicable, on the merits and Indemnitee will not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Article 8, Indemnitee will be presumed to be entitled to indemnification under this Agreement, the Company will have the burden of proving Indemnitee is not entitled to indemnification and the Company may not refer to or introduce evidence of any determination pursuant to Article 6 adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Article 8, Indemnitee will not be required to reimburse the Company for any Expense Advance made pursuant to Article 4 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

**8.3 Company Bound by Favorable Determination by Reviewing Party.** If a determination is made that Indemnitee is entitled to indemnification pursuant to Article 6, the Company will be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Article 8, absent (i) a misstatement by Indemnitee of a material fact or an omission of a material fact necessary to make Indemnitee's statements in connection with the request for indemnification not materially misleading or (ii) a prohibition of such indemnification under law.

**8.4 Company Bears Expenses if Indemnitee Seeks Adjudication.** In the event that Indemnitee, pursuant to this Article 8, seeks a judicial adjudication or arbitration of his rights under, or to recover damages for breach of, this Agreement, any other agreement for indemnification, the indemnification or advancement of expenses provisions in the Articles or Bylaws, payment of Expenses in advance or contribution hereunder or to recover under any director and officer liability insurance policies maintained by the Company, the Company will, to the fullest extent permitted by law, indemnify and hold harmless Indemnitee against any and all Expenses which are paid or incurred by Indemnitee in connection with such judicial adjudication or arbitration, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, payment of Expenses in advance or contribution or insurance recovery. In addition, if requested by Indemnitee, the Company will (within five days after receipt by the Company of the written request therefor), pay as an Expense Advance such Expenses, to the fullest extent permitted by law.

**8.5 Company Bound by Provisions of this Agreement.** The Company will be precluded from asserting in any judicial or arbitration proceeding commenced pursuant to this Article 8 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and will stipulate in any such judicial or arbitration proceeding that the Company is bound by all the provisions of this Agreement.

**ARTICLE 9**  
**NON-EXCLUSIVITY, SUBROGATION; NO DUPLICATIVE PAYMENTS;**  
**MORE FAVORABLE TERMS**

**9.1 Non-Exclusivity.** The rights of indemnification and to receive Expense Advances as provided by this Agreement will not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Articles, the Bylaws, any agreement, a vote of stockholders, a resolution of the directors or otherwise. To the extent Indemnitee otherwise would have any greater right to indemnification or payment of any advancement of Expenses under any other provisions under applicable law, the Articles, Bylaws, any agreement, vote of stockholders, a resolution of directors or otherwise, Indemnitee will be entitled under this Agreement to such greater right. No amendment, alteration or repeal of this Agreement or of any provision hereof limits or restricts any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee prior to such amendment, alteration or repeal. To the extent that a change in the NRS, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Articles, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy will be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or employment of any other right or remedy.

**9.2 Subrogation.** In the event of any payment by the Company under this Agreement, the Company will be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee with respect thereto and Indemnitee will execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights (it being understood that all of Indemnitee's reasonable Expenses related thereto will be borne by the Company).

**9.3 No Duplicative Payments.** The Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or any Expense for which advancement is provided) hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise. The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee in respect of Proceedings relating to Indemnitee's service at the request of the Company as a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of any other Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such other Enterprise.

**9.4 More Favorable Terms.** In the event the Company enters into an indemnification agreement with another officer or director, as the case may be, containing terms more favorable to the indemnitee thereof than the terms contained herein (and absent special circumstances justifying such more favorable terms), Indemnitee will be afforded the benefit of such more favorable terms and such more favorable terms will be deemed incorporated by reference herein as if set forth in full herein. As promptly as practicable following the execution thereof, the

Company will (a) send a copy of the agreement containing more favorable terms to Indemnitee, and (b) prepare, execute and deliver to Indemnitee an amendment to this Agreement containing such more favorable terms.

## **ARTICLE 10 DEFENSE OF PROCEEDINGS**

**10.1 Company Assuming the Defense.** Subject to Section 10.3 below, in the event the Company is obligated to pay in advance the Expenses of any Proceeding pursuant to Article 4, the Company will be entitled, by written notice to Indemnitee, to assume the defense of such Proceeding, with counsel approved by Indemnitee, which approval will not be unreasonably withheld. The Company will identify the counsel it proposes to employ in connection with such defense as part of the written notice sent to Indemnitee notifying Indemnitee of the Company's election to assume such defense, and Indemnitee will be required, within ten days following Indemnitee's receipt of such notice, to inform the Company of its approval of such counsel or, if it has objections, the reasons therefor. If such objections cannot be resolved by the parties, the Company will identify alternative counsel, which counsel will also be subject to approval by Indemnitee in accordance with the procedure described in the prior sentence.

**10.2 Right of Indemnitee to Employ Counsel.** Following approval of counsel by Indemnitee pursuant to Section 10.1 and retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees and expenses of counsel subsequently incurred by Indemnitee with respect to the same Proceeding; *provided, however,* that (a) Indemnitee has the right to employ counsel in any such Proceeding at Indemnitee's expense and (b) the Company will be required to pay the fees and expenses of Indemnitee's counsel if (i) the employment of counsel by Indemnitee has been previously authorized by the Company, (ii) Indemnitee reasonably concludes that there is an actual or potential conflict between the Company (or any other person or persons included in a joint defense) and Indemnitee in the conduct of such defense or representation by such counsel retained by the Company or (iii) the Company does not continue to retain the counsel approved by Indemnitee.

**10.3 Company Not Entitled to Assume Defense.** Notwithstanding Section 10.1, the Company will not be entitled to assume the defense of any Proceeding brought by or on behalf of the Company or any Proceeding as to which Indemnitee has reasonably made the conclusion provided for in Section 10.2(b)(ii).

## **ARTICLE 11 SETTLEMENT**

**11.1 Company Bound by Provisions of this Agreement.** Notwithstanding anything in this Agreement to the contrary, the Company will have no obligation to indemnify Indemnitee under this Agreement for any amounts paid in settlement of any Proceeding effected without the Company's prior written consent.

**11.2 When Indemnitee's Prior Consent Required.** The Company will not, without the prior written consent of Indemnitee, consent to the entry of any judgment against Indemnitee or enter into any settlement or compromise which (i) includes an admission of fault of Indemnitee, any non-monetary remedy imposed on Indemnitee or a Loss for which Indemnitee is not wholly indemnified hereunder or (ii) with respect to any Proceeding with respect to which Indemnitee may be or is made a party or a participant or may be or is otherwise entitled to seek indemnification hereunder, does not include, as an unconditional term thereof, the full release of Indemnitee from all liability in respect of such Proceeding, which release will be in form and substance reasonably satisfactory to Indemnitee. Neither the Company nor Indemnitee will unreasonably withhold its consent to any proposed settlement; *provided, however*, Indemnitee may withhold consent to any settlement that does not provide a full and unconditional release of Indemnitee from all liability in respect of such Proceeding.

## **ARTICLE 12 DURATION OF AGREEMENT**

**12.1 Duration of Agreement.** This Agreement will continue until and terminate upon the latest of (a) the statute of limitations applicable to any claim that could be asserted against an Indemnitee with respect to which Indemnitee may be entitled to indemnification and/or an Expense Advance under this Agreement, (b) ten years after the date that Indemnitee has ceased to serve as a director or officer of the Company or as a director, officer, employee, partner, member, manager, fiduciary or agent of any other Enterprise which Indemnitee served at the request of the Company, or (c) if, at the later of the dates referred to in (a) and (b) above, there is pending a Proceeding in respect of which Indemnitee is granted rights of indemnification or the right to an Expense Advance under this Agreement or a Proceeding commenced by Indemnitee pursuant to Article 8 of this Agreement, one year after the final termination of such Proceeding, including any and all appeals.

## **ARTICLE 13 MISCELLANEOUS**

**13.1 Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties in respect of the subject matter hereof and supersedes all prior understandings, agreements or representations by or among the parties, written or oral, to the

extent they relate in any way to the subject matter hereof; *provided, however*, it is agreed that the provisions contained in this Agreement are a supplement to, and not a substitute for, any provisions regarding the same subject matter contained in the Articles, the Bylaws and any employment or similar agreement between the parties.

**13.2 Assignment; Binding Effect; Third Party Beneficiaries.** No party may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of the other party and any such assignment by a party without prior written approval of the other parties will be deemed invalid and not binding on such other parties; provided, however, that the Company may assign all (but not less than all) of its rights, obligations and interests hereunder to any direct or indirect successor to all or substantially all of the business or assets of the Company by purchase, merger, consolidation or otherwise and will cause such successor to be bound by and expressly assume the terms and provisions hereof. All of the terms, agreements, covenants, representations, warranties and conditions of this Agreement are binding upon, and inure to the benefit of and are enforceable by, the parties and their respective successors, permitted assigns, heirs, executors and personal and legal representatives. There are no third party beneficiaries having rights under or with respect to this Agreement.

**13.3 Notices.** All notices, requests and other communications provided for or permitted to be given under this Agreement must be in writing and be given by personal delivery, by certified or registered United States mail (postage prepaid, return receipt requested), by a nationally recognized overnight delivery service for next day delivery, or by facsimile transmission, as follows (or to such other address as any party may give in a notice given in accordance with the provisions hereof):

If to the Company:

United Fuel & Energy Corporation  
405 N. Marienfeld  
Midland, Texas 78701  
Attention: Charles McArthur  
Facsimile: (432) 571-8099

with a copy (which will not constitute notice) to:

Akin Gump Strauss Hauer & Feld LLP  
300 Convent Street, Suite 1500  
San Antonio, Texas 78205  
Attention: Wilhelm E. Liebmann  
Facsimile: (210) 224-2035

If to Indemnitee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Facsimile: \_\_\_\_\_

with a copy (which will not constitute notice) to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Facsimile: \_\_\_\_\_

All notices, requests or other communications will be effective and deemed given only as follows: (i) if given by personal delivery, upon such personal delivery, (ii) if sent by certified or registered mail, on the fifth business day after being deposited in the United States mail, (iii) if sent for next day delivery by overnight delivery service, on the date of delivery as confirmed by written confirmation of delivery, (iv) if sent by facsimile, upon the transmitter's confirmation of receipt of such facsimile transmission, except that if such confirmation is received after 5:00 p.m. (in the recipient's time zone) on a business day, or is received on a day that is not a business day, then such notice, request or communication will not be deemed effective or given until the next succeeding business day. Notices, requests and other communications sent in any other manner, including by electronic mail, will not be effective.

**13.4 Specific Performance; Remedies.** Each party acknowledges and agrees that the other party would be damaged irreparably if any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached. Accordingly, the parties will be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and its provisions in any action or proceeding instituted in any court of the United States or any state thereof having jurisdiction over the parties and the matter, in addition to any other remedy to which they may be entitled, at law or in equity. Except as expressly provided herein, the rights, obligations and remedies created by this Agreement are cumulative and in addition to any other rights, obligations or remedies otherwise available at law or in equity. Except as expressly provided herein, nothing herein will be considered an election of remedies.

**13.5 Headings.** The article and section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

**13.6 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Nevada, without giving effect to any choice of law principles.

**13.7 Amendment.** This Agreement may not be amended or modified except by a writing signed by all of the parties.

**13.8 Extensions; Waivers.** Any party may, for itself only, (i) extend the time for the performance of any of the obligations of any other party under this Agreement, (ii) waive any inaccuracies in the representations and warranties of any other party contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any such extension or waiver will be valid only if set forth in a writing signed by the party to be bound thereby. No waiver by any party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, may be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising because of any prior or subsequent such occurrence. Neither the failure nor any delay on the part of any party to exercise any right or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise of the same or of any other right or remedy.

**13.9 Severability.** The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof; provided that if any provision of this Agreement, as applied to any party or to any circumstance, is judicially determined not to be enforceable in accordance with its terms, the parties agree that the court judicially making such determination may modify the provision in a manner consistent with its objectives such that it is enforceable, and/or to delete specific words or phrases, and in its modified form, such provision will then be enforceable and will be enforced.

**13.10 Counterparts; Effectiveness.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile transmission or email of a .pdf or .tiff formatted document.

**13.11 Construction.** This Agreement has been freely and fairly negotiated among the parties. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party because of the authorship of any provision of this Agreement. Any reference to any law will be deemed also to refer to such law as amended and all rules and regulations promulgated thereunder, unless the context requires otherwise. The words “include,” “includes,” and “including” will be deemed to be followed by “without limitation.” Pronouns in masculine, feminine, and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words “this Agreement,” “herein,” “hereof,” “hereby,” “hereunder,” and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The parties intend that each representation, warranty, and covenant contained herein will have independent significance. If any party has breached any representation, warranty, or covenant contained herein in any respect, the fact that

there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the party has not breached will not detract from or mitigate the fact that the party is in breach of the first representation, warranty, or covenant. Time is of the essence in the performance of this Agreement.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**UNITED FUEL & ENERGY CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**INDEMNITEE**

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name

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**APPENDIX C**

**MATRIX CAPITAL OPINION**

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December 29, 2009

Special Committee of the Board of Directors and the Board of Directors  
c/o Jesse Tutor, Chairman of the Special Committee  
United Fuel and Energy Corporation  
1800 West Katella Avenue  
Suite 102  
Orange, California 92867

Re: Fairness Opinion

Members of the Special Committee of the Board of Directors and the Board of Directors:

You have requested our opinion as to the fairness, from a financial point of view, to the shareholders of United Fuel and Energy Corporation, a Nevada corporation (“United” or the “Company”), of the consideration to be received by such shareholders for their common stock pursuant to the Agreement and Plan of Merger (the “Agreement”) dated as of December 24, 2009 by and among Southern Counties Oil Co., a California Limited Partnership (“Parent”), Goldstream, Inc., a Nevada corporation and a direct, wholly-owned subsidiary of Parent (“Merger Sub”), and the Company. Capitalized terms used herein, unless otherwise defined herein, will have the meanings ascribed to them in the Agreement.

The Agreement provides for, among other things, (i) a tender offer (the “Offer”) by the Merger Sub to purchase all outstanding shares of United common stock, \$0.001 par value per share (“Company Common Stock”), at a purchase price of \$0.30 per share, net to the shareholders in cash (the “Consideration”) and (ii) subsequent to the Offer, a merger of the Company with and into the Merger Sub (the “Merger” and, together with the Offer, the “Transaction”) pursuant to which each share of Company Common Stock (other than shares of Company Common Stock as to which appraisal rights are properly exercised in accordance with Section 380 of Chapter 92A of the Nevada Revised Statutes) will be converted into the right to receive the Consideration. Pursuant to the Merger, the Surviving Company will become the wholly-owned subsidiary of the Parent.

As a customary part of its investment banking business, Matrix Capital Markets Group, Inc. (“Matrix”) is engaged in the valuation of businesses and securities in connection with mergers and acquisitions, private placements, and valuations for corporate and other purposes. In return for our services in connection with providing this opinion, the Company will pay us a fee, which

Mr. Jesse Tutor, Chairman of the Special Committee

December 29, 2009

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fee is not contingent upon the consummation of the Transaction, and indemnify us against certain liabilities. We are not acting as a financial advisor to the Company in connection with the Transaction from which we will receive other fees that are contingent upon the consummation of the Transaction.

In arriving at our opinion, we have undertaken such reviews, analyses and inquiries as we deemed necessary and appropriate under the circumstances. Among other things, we have (i) reviewed the latest draft of the Agreement; (ii) analyzed financial and other information that is publicly available relating to the Company; (iii) analyzed certain internal financial and operating data of the Company that has been made available to us by the Company; (iv) discussed with management of the Company the financial condition, operating results, business outlook and prospects of the Company; (v) analyzed the stock price premiums paid in recent mergers and acquisitions of publicly traded companies; (vi) performed a discounted cash flow analysis of the Company's projected financial performance using financial projections based on information provided to us by the Company's management; (vii) analyzed the valuations of publicly traded companies that we deemed generally comparable to the Company; (viii) researched financial terms of certain recent transactions we deemed generally similar to the Transaction; and (ix) considered the possible incremental value of the Company's non-operating tax assets.

We have relied upon and assumed the accuracy, completeness, and fairness of the financial statements and other information furnished by, or publicly available relating to, the Company, or otherwise made available to us, and relied upon and assumed that the representations and warranties of the Company contained in the Agreement are true and correct. We were not engaged, and did not attempt or assume responsibility, to verify independently any such information. We have further relied upon assurances by the Company that the information provided to us has a reasonable basis, and with respect to projections and other business outlook information, reflects the best currently available estimates, and that the Company is not aware of any information or fact that would make the information provided to us incomplete or misleading. We also assumed that the Company, Parent, and the Merger Sub each will perform all of the covenants and agreements to be performed by it under the Agreement and that the conditions to the Transaction as set forth in the Agreement would be satisfied and that the Transaction would be consummated on a timely basis in the manner contemplated by the Agreement.

In arriving at our opinion, we have not performed any appraisals or valuation of specific assets or liabilities of the Company for the specific purpose of expressing an opinion regarding the

Mr. Jesse Tutor, Chairman of the Special Committee

December 29, 2009

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liquidation value of the Company or any of its assets. Our opinion is based upon the information available to us and the facts and circumstances as they exist and are subject to evaluations on the date hereof; events occurring after the date hereof could materially affect the assumptions used in preparing this opinion. However, we do not have any obligations to update, revise, or reaffirm this opinion.

We have relied, with respect to legal and accounting matters related to the Agreement, on the advice of the Company's legal and accounting advisors. We have made no independent investigation of any legal or accounting matters that may affect the Company, Parent, or the Merger Sub and have assumed the correctness of the legal and accounting advice provided to the Company, Parent, and the Merger Sub and their respective Boards of Directors.

Our opinion is rendered for the benefit and use of the Special Committee of the Board of Directors of the Company and the Board of Directors of the Company in connection with the Special Committee's and the Board's consideration of the Transaction and does not constitute a recommendation to any holder of Company Common Stock as to whether such holder should tender shares of Company Common Stock pursuant to the Offer or how such shareholder should vote with respect to the Merger. We do not opine on, nor does our opinion consider, the tax consequences of the Transaction, including tax consequences to any holder of Company Common Stock. We have not been asked to, nor do we, express an opinion as to the relative merits of the Transaction as compared to any alternative business strategies that might exist for the Company, the effect of any other transaction in which the Company might engage, or the form of the Agreement or the terms contained therein. Furthermore, we express no opinion as to the prices at which United stock may trade following the date of this opinion. This opinion may not be published or otherwise used or referred to publicly without our written consent; provided, however, that this opinion may be included in its entirety in any filing with the Securities and Exchange Commission with respect to the Transaction.

Based upon and subject to the foregoing, and based upon such other facts as we consider relevant, it is our opinion that, as of the date hereof, the Consideration to be received by the Company's shareholders for their Company Common Stock in the proposed Transaction is fair to such shareholders from a financial point of view.

Sincerely,

*Matrix Capital Markets Group, Inc.*  
Matrix Capital Markets Group, Inc.

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