

ABLE ENERGY INC  
Form PRER14A  
May 22, 2006

---

---

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
SCHEDULE 14A  
(Rule 14a-101)

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934  
(Amendment No. 3 )

Filed by the Registrant  x  
Filed by a Party other than the Registrant  o  
Check the appropriate box:

- x Preliminary Proxy Statement
- o Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- o Definitive Proxy Statement
- o Definitive Additional Materials
- o Soliciting Material Pursuant to Rule 14a-12

**ABLE ENERGY, INC.**

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)  
Payment of Filing Fee (Check the appropriate box):

- x No fee required.
- o Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:  
**Common stock, par value \$0.001 per share**

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

- Fee paid previously with preliminary materials.
- Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing:

- (1) Amount previously paid:
  - (2) Form, Schedule or Registration Statement  
No:
  - (3) Filing party:
  - (4) Date Filed:
-

Explanatory Note: The Registrant filed Amendment No. 1 to its Preliminary Proxy Statement on April 11, 2006, and Amendment No. 2 to the Registrant's Preliminary Proxy Statement on April 13, 2006. This Amendment No. 3 provides unaudited interim financial statements for the nine month period ended March 31, 2005, amendments to the audited financial statements for and as of twelve month periods ended December 31, 2005 and 2004 and the unaudited pro forma financial statements required under Rule 3-05 of Regulation S-X as well as information under the caption, "Selected Unaudited Pro Forma Combined Financial Information".

---

**ABLE ENERGY, INC.  
198 GREEN POND ROAD  
ROCKAWAY, NEW JERSEY 07866  
(973) 625-1012**

Dear Stockholder:

We cordially invite you to attend a special meeting of stockholders to be held at 10:00 a.m. on \_\_\_\_\_, 2006 at the offices of Able Energy, 1140 6<sup>th</sup> Avenue, Suite 1800, New York, New York 10036.

At the special meeting, you will be asked to approve, for purposes of NASD Marketplace Rule 4350(i) and Delaware Section 203 of the Delaware General Corporation Law, an issuance of our common stock which will result in the acquisition of substantially all of the assets of All American Plazas, Inc., or All American, a Pennsylvania corporation, pursuant to the Stock Purchase Agreement, dated as of June 16, 2005, by and among the shareholders of All American and us (as amended and restated into the Asset Purchase Agreement as of the same date). Our board of directors recommends the approval of this proposal.

You will also be asked to approve, for purposes of NASD Marketplace Rule 4350(i) only, the potential issuance of our common stock through the exercise of certain convertible debentures we issued in connection with a \$2.5 million sale of such debentures which took place in July 12, 2005. A description of this convertible debenture financing together with the financing documents are disclosed in Form 8-K filed July 15, 2005.

In addition, you will be to approve an increase in the number of shares of common stock which we may issue from 10 million to 75 million. This increase in the number of shares of common stock is not only necessary in order to issue the shares the acquisition of the All American assets described above, but will likely also be necessary in order to provide us adequate capitalization on a going forward basis. Our board of directors recommends the approval of this proposal.

Finally, you will be asked to act on such other business as may properly come before the special meeting.

Enclosed is a notice of special meeting and proxy statement containing detailed information concerning the acquisition. Whether or not you plan to attend the special meeting, we urge you to read this material carefully. I look forward to seeing you at the meeting.

Sincerely,

Gregory D. Frost  
Chief Executive Officer and Chairman of  
the Board,

This proxy statement is dated \_\_\_\_\_, 2006 and is first being mailed to our stockholders on or about \_\_\_\_\_, 2006.

**YOUR VOTE IS IMPORTANT. WHETHER YOU PLAN TO ATTEND THE SPECIAL MEETING OR NOT, PLEASE SIGN, DATE AND RETURN THE ENCLOSED PROXY CARD AS SOON AS POSSIBLE IN THE ENVELOPE PROVIDED.**

**ABLE ENERGY, INC.  
198 GREEN POND ROAD  
ROCKAWAY, NEW JERSEY 07866**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS  
TO BE HELD ON \_\_\_\_\_, 2006**

TO THE STOCKHOLDERS OF ABLE ENERGY, INC.:

NOTICE IS HEREBY GIVEN that a special meeting of stockholders, including any adjournments or postponements thereof, of Able Energy, Inc., a Delaware corporation, will be held at 10:00 a.m. eastern time, on \_\_\_\_\_, 2006, at the offices of Able Energy, 1140 6<sup>th</sup> Avenue, Suite 1800, New York, New York 10036, for the following purposes:

- to consider and vote upon a proposal, for purposes of NASD Marketplace Rule 4350 and Section 203 of the Delaware General Corporation Law to effect an issuance of our common stock which will result in the acquisition of substantially all of the assets of All American Plazas, Inc., or All American, pursuant to the Stock Purchase Agreement, dated as of June 16, 2005 (as amended and restated into the Asset Purchase Agreement as of the same date), among All American and us;
- to consider and vote upon a proposal, for purposes of NASD Marketplace Rule 4350(i) only, the potential issuance of our common stock through the exercise of certain convertible debentures and warrants we issued in connection with a \$2.5 million sale of such debentures which took place in July 12, 2005;
- to consider and vote upon a proposal to increase the number of shares we are authorized to issue from 10 million to 75 million; and
- to consider and vote upon such other business as may properly come before the meeting or any adjournment or postponement thereof.

In connection with a July 12, 2005 financing transaction, we seek approval from the shareholders of an issuance of common stock which exceeds 20% of our issued and outstanding common stock as of July 11, 2005. Note that on November 16, the additional investment right described in Section 4.17 of the Securities Purchase Agreement dated July 12, 2005 was eliminated, and, in its place, investors were granted warrants to purchase shares of our common stock at an exercise price of \$7.50. If fully exercised, these additional warrants granted on November 16, 2005 would aggregate 5.25 million. As of July 11, 2005, the Company's total number of issued shares of common stock was 2,449,520. Twenty percent of the Company's total outstanding shares of common stock as of such date was 489,904. We estimate the total number of shares which may be issued in connection with the July 12, 2005 financing transaction as follows: (a) upon conversion of convertible debentures, including estimated interest - 415,361 shares of common stock; (b) upon exercise of the warrants granted in connection with the original July 12, 2005 transaction - 192,308 shares of common stock; and (c) upon exercise of warrants granted in connection with the November 16, 2005 amendment - 5,250,000 shares of common stock. Thus, we are seeking the approval to issue up to an additional 5,367,765 shares of our common stock along with any other shares which we may issue as a result of any interest or anti-dilution adjustment which is also described in the Securities Purchase Agreement.

Edgar Filing: ABLE ENERGY INC - Form PRER14A

The proceeds of the July 12, 2005 financing was used for working capital purposes and to make a loan to All American Plazas, Inc. On July 27, 2005, the Company made a loan in the amount of \$1,730,000 to All American. All American executed and delivered a Promissory Note for the full amount of the loan in favor of our company. Under the terms of the Promissory Note, the outstanding principal of the loan bears interest at the rate of 3.5% per annum. The maturity date of the Promissory Note has been extended to March 30, 2006 and has since been further extended, in consideration of an increase of the interest rate to 6.5% per annum, to the earlier of either the closing of the acquisition or the closing of a financing transaction relating to the conveyance of All American's real estate assets to us (see our Current Report on Form 8-K filed March 27, 2006 with the SEC).

---

Background relating to the acquisition of All American's assets is contained in the "Q&A" section that follows as well as throughout this proxy statement.

The board of directors has fixed the close of business on \_\_\_\_\_, 2006 as the date for which our stockholders are entitled to receive notice of, and to vote at, the special meeting and any adjournments or postponements thereof. Only the holders of record of our common stock on that date are entitled to have their votes counted at the special meeting and any adjournments or postponements thereof.

We will not transact any other business at the special meeting, except for business properly brought before the special meeting or any adjournment or postponement by our board of directors.

Your vote is important. Please sign, date and return your proxy card as soon as possible to make sure that your shares are represented at the special meeting. If you are a stockholder of record of our common stock, you may also cast your vote in person at the special meeting. If your shares are held in an account at a brokerage firm or bank, you must instruct your broker or bank on how to vote your shares.

Our board of directors unanimously recommends that you vote "FOR" the proposal to effect an issuance of our common stock which will result in our acquisition of All American.

By Order of the Board of Directors,

Gregory D. Frost  
Chief Executive Officer and Chairman of  
the Board  
\_\_\_\_\_, 2006

---

**TABLE OF CONTENTS**

<b>SECTION</b>	<b>PAGE</b>
QUESTIONS AND ANSWERS ABOUT THE MATTERS SUBJECT TO VOTE	2
SUMMARY	5
SELECTED HISTORICAL FINANCIAL INFORMATION	11
ALL AMERICAN HISTORICAL FINANCIAL INFORMATION	
SELECTED UNAUDITED PRO FORMA COMBINED FINANCIAL INFORMATION	13
RISK FACTORS	13
FORWARD-LOOKING STATEMENTS	19
THE SPECIAL MEETING	19
THE ACQUISITION PROPOSAL	22
THE ASSET PURCHASE AGREEMENT	33
THE SECURITIES PURCHASE AGREEMENT (AND RELATED DOCUMENTS)	38
INFORMATION ABOUT ALL AMERICAN	38
DIRECTORS AND MANAGEMENT OF ABLE ENERGY, INC.	59
FOLLOWING THE ACQUISITION OF ALL AMERICAN	59
BENEFICIAL OWNERSHIP OF OUR SECURITIES	61
MARKET PRICE INFORMATION AND DIVIDENDS	63
DESCRIPTION OF OUR SECURITIES	64
STOCKHOLDER PROPOSALS	65
WHERE YOU CAN FIND MORE INFORMATION	66
ANNEX A - ASSET PURCHASE AGREEMENT	
ANNEX B - AUDITED FINANCIALS	



ANNEX C - PROPOSED CHARTER AMENDMENT

ANNEX D - FAIRNESS OPINION

ANNEX E - PRO FORMA FINANCIAL STATEMENTS

PROXY CARD

---

## **QUESTIONS AND ANSWERS ABOUT THE MATTERS SUBJECT TO VOTE**

### **What is being voted on?**

You are being asked to consider and vote upon a proposal, for purposes of NASD Marketplace Rule 4350 and Section 203 of the Delaware General Corporation Law, to effect an issuance of our common stock which will result in our acquisition of All American Plazas, Inc., or All American, pursuant to the Asset Purchase Agreement, dated as of June 16, 2005, by and among All American and us (which agreement was originally entered into as the Stock Purchase Agreement, but was thereafter amended and restated as such Asset Purchase Agreement). We refer to this transaction in places throughout this proxy as the “acquisition”.

You will also be asked to approve, for purposes of NASD Marketplace Rule 4350(i) only, the potential issuance of our common stock through the exercise of certain convertible debentures we issued in connection with a \$2.5 million sale of such debentures which took place in July 12, 2005. A description of this convertible debenture financing together with the financing documents are disclosed in the Current Report on Form 8-K filed July 15, 2005. We refer to this financing transaction in places throughout this proxy as the “financing”.

In addition, you are also being asked to consider and vote upon a proposal to amend our Certificate of Incorporation to authorize 75 million shares of our common stock to be issued. Our current Certificate of Incorporation permits us to issue up to 10 million shares of common stock and 10 million shares of preferred stock. Approval of an increase in the number of shares of our common stock will be necessary to complete the acquisition since the acquisition currently contemplates the issuance of 11,666,667 shares of common stock. Regardless of whether or not the acquisition is completed, however, our Board of Directors believes that the benefits of providing it with the flexibility to issue shares without delay for any proper business purpose, including other potential acquisitions or as an alternative to an unsolicited business combination opposed by the Board, outweigh the possible disadvantages of dilution and that it is prudent and in the best interests of stockholders to provide the advantage of greater flexibility which will result from the such amendment. We refer to this proposal in places throughout this proxy as the “charter amendment”.

### **Why are we proposing the acquisition and seeking approval for the financing?**

We will continue to operate in the same manner following our acquisition of All American in the home heating oil and HVAC business. The Board and management of the Company believe that based upon the acquisition, we will be able to expand our distribution of home heating oil. We believe that the increased buying power resulting from the acquisition will result in our ability to negotiate more financially advantageous fuel purchase credit terms. Also we plan to utilize the All American truck stop locations as additional distribution centers to store fuel and house home heating oil delivery vehicles for the sale of its primary product. As part of the relationship established between us and All American, both companies purchase their fuel requirements primarily through TransMontaigne Product Services, Inc. In addition, both us and All American have created additional business relationships with TransMontaigne. In this regard, we have an operations subsidiary named PriceEnergy.com which has created a network of distributors with the assistance of TransMontaigne and All American to deliver fuel upon receiving orders through use of the internet.

We plan with the assistance of All American, to continue to expand our third party dealer network to enable PriceEnergy.com to deliver home heating oil throughout the United States.

As a result, we believe that the acquisition of All American will provide our stockholders with an opportunity to acquire, and participate in, a company with significant growth potential.

### **What vote is required to approve the financing and charter amendment?**

Approval of the financing and charter amendment requires the affirmative vote of a majority of the shares entitled to vote at the special meeting.

**What vote is required in order to approve the acquisition proposal?**

-2-

---

The approval of the acquisition of All American will require the vote of 66-2/3% of our outstanding voting common stock or two-thirds of the votes cast, in person or by proxy, at the special meeting, exclusive of shares of common stock held by All American.

### **Why are we seeking approval for the acquisition and the financing?**

As a result of being listed for trading on the Nasdaq Capital Market, issuances of our common stock are subject to the NASD Marketplace Rules, such as Rule 4350. For example, under Rule 4350(i)(1)(B) and 4350(i)(1)(D), respectively, stockholder approval must be sought when (a) the issuance or potential issuance will result in a change of control of the issuer or (b) in connection with a transaction other than a public offering involving the sale, issuance or potential issuance by the issuer of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock. Furthermore, under Rule 4350(i)(1)(C), stockholder approval must be sought in connection with an acquisition of the stock or assets of another company if any director, officer or substantial shareholder of the issuer has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more.

Pursuant to the asset purchase agreement relating to the acquisition, we have agreed to issue shares of our common stock in consideration for substantially all of the assets of All American. The issuance of common stock to All American may result in a violation of the foregoing provisions of Rule 4350, absent stockholder approval for such issuance and the resulting acquisition. In addition, with respect to the financing, a total of 789,970 shares of our common stock may be issued assuming full conversion of all debentures and warrants issued in connection with the financing. On July 12, 2005, the date in which we entered into the documents relating to the financing, our closing price per share of our common stock was \$17.90 (which was greater than the book value of our shares). The exercise price of debentures and warrants issued in connection with the financing is less than the closing price for our shares on July 12, 2005.

The Company is subject to Section 203 of the Delaware General Corporation Law ("Section 203"), which restricts certain transactions and business combinations between a corporation and an "interested stockholder" for a period of three years from the date the stockholder becomes an interested stockholder. An "interested stockholder" is any entity (or related entities) which owns 15% or more of a corporation's outstanding voting stock. Subject to certain exceptions (which do not apply to the acquisition), unless the transaction is approved by the Board of Directors and the holders of at least 66-2/3% of the outstanding voting stock of the corporation (excluding shares held by any interested stockholder), Section 203 prohibits significant business transactions such as a merger with, disposition of assets to, or receipt of disproportionate financial benefits by the interested stockholder, or any other transaction that would increase the interested stockholder's proportionate ownership of any class or series of a corporation's stock.

On December 15, 2004, Timothy Harrington, our CEO at that time, sold an aggregate of 1,007,300 shares of our common stock to All American. The purchase price for the sale was \$7,500,000, of which \$2,750,000 was paid in cash and All American issued promissory notes in the aggregate principal amount of \$4,750,000 to Mr. Harrington. As a result of Mr. Harrington's sale, All American became an "interested stockholder" for purposes of Section 203 as described above. Additional details regarding Mr. Harrington's sale of his common stock to All American were described in the Current Report on Form 8-K filed with the SEC on December 21, 2004. In addition, as a result of the acquisition, we estimate that All American will own approximately 12.7 million shares of our common stock (out of a total of approximately 14.7 million issued and outstanding). Thus, approval under Section 203 is required by 66-2/3% of the stockholders of the company because All American's common stock ownership of the company will increase

from 32% as of the date hereof to approximately 85%. All of All American's shares received in connection with the acquisition will be restricted shares and not subject to any registration requirement. In addition, approximately up to 2.5 million of the 11.67 million shares of restricted common stock All American will receive in the acquisition will be escrowed and may be cancelled in the event that holder of certain convertible debentures issued by All American elect to convert their respective debentures into shares of our common stock, thus reducing All American's stock interest to approximately 68%. For additional information see "Recent Financing of All American" under the heading, "The Acquisition Proposal".

-3-

---

**What will the name of the company be after the acquisition and financing?**

Following the completion of the acquisition, the combined company's name will remain "Able Energy, Inc."

**What will I receive in the acquisition or the financing?**

Holders of our securities will continue to hold the Able Energy, Inc. securities they currently own, and will not receive any of the cash paid in connection with the acquisition or the financing. We are simply acquiring substantially all of the outstanding assets of All American and obtaining certain financing for working capital purposes. All American will receive all of our shares of common stock being issued by us in the acquisition.

**Who will manage us upon completion of the acquisition of All American?**

Upon completion of the acquisition, we will be managed by the following persons: Gregory D. Frost will be our Chief Executive Officer and Chairman; Steven Vella will be our Chief Financial Officer; Christopher P. Westad will be our President; and Richard Mitstifer will become a director of our company and be also the Executive Vice President of our new All American Division or subsidiary.

The financing itself will not result in any changes to our management or Board of Directors other than as stated herein.

**How are you paying for the acquisition?**

At the closing, we will issue to All American 11,666,667 restricted shares of our common stock at \$3.00 per share for an aggregate purchase price of \$35,000,000. The pricing for this transaction was determined by taking the average of a 20 consecutive day closing price of a share of our common stock in February 2005. The price of our common stock as of May 19, 2006 was \$6.30 per share.

The issuance will result in All American owning approximately 85% of our outstanding common stock on a post-issuance basis. Note, however, that All American has agreed to escrow up to 2.5 million shares and that one share of such escrowed common stock will be cancelled for each share of common stock which is issued pursuant to our assumption of certain All American convertible debentures.

**What happens if the acquisition or the financing is not approved?**

If the acquisition is not approved, then we will not be able to consummate the acquisition upon the terms currently contemplated by the asset purchase agreement. We may attempt to renegotiate the terms of the acquisition and seek stockholder approval at a later date.

If the financing is not approved, then we may restructure the financing or rescind the financing and return all funds to the current debenture and warrant holders.

**When do you expect the acquisition and the financing to be completed?**

It is currently anticipated that the acquisition will be completed promptly following our special meeting of stockholders on \_\_\_\_\_, 2006. The financing transaction has been completed, subject to approval of our stockholders.

**If I am not going to attend the special meeting of stockholders in person, should I return my proxy card instead?**



Yes. After carefully reading and considering the information contained in this proxy statement, please complete and sign your proxy card. Then return the enclosed proxy card in the return envelope provided herewith as soon as possible, so that your shares may be represented at the special meeting.

**What will happen if I abstain from voting or fail to vote?**

Abstentions are treated as shares present or represented and entitled to vote at the special meeting and will have the same effect as a vote against the acquisition or financing proposals. Broker non-votes are not deemed to be present and represented and are not entitled to vote, and therefore will have no effect on the outcome of the proposal.

**What do I do if I want to change my vote?**

If you wish to change your vote, please send a later-dated, signed proxy card to Gregory D. Frost at Able Energy, Inc. prior to the date of the special meeting or attend the special meeting and vote in person. You also may revoke your proxy by sending a notice of revocation to Gregory D. Frost at the address of our corporate headquarters.

**If my shares are held in “street name” by my broker, will my broker vote my shares for me?**

No. Your broker can vote your shares only if you provide instructions on how to vote. You should instruct your broker to vote your shares in accordance with directions provided by your broker.

**Do I need to turn in my old certificates?**

No. If you hold your securities in certificate form, as opposed to holding them through your broker, you do not need to exchange them for new certificates. Your current certificates will represent your rights in Able Energy, Inc.

**Who can help answer my questions?**

If you have questions about the acquisition, you may write or call Able Energy, Inc., 198 Green Pond Road, Rockaway, New Jersey 07866, (973) 625-1012, Attention: Gregory D. Frost or Christopher Westad.

**SUMMARY**

This summary discusses the material items of the acquisition proposal and the financing, which are also described elsewhere in this proxy statement. You should carefully read this entire proxy statement and the other documents to which this proxy statement refers you. See “Where You Can Find More Information.”

**Acquisition of All American**

*All American Plazas, Inc.*

All American, which is headquartered in Myerstown, Pennsylvania, is in the business of owning, operating and developing truck stops. Its operations include, but are not limited to, the ancillary merchandising of rights, products, and other goods and services. All American operates 11 multi-service truck stops in the United States that sell diesel fuel and related services to approximately 5,000 trucking accounts and other independent consumers. Its operations are located at primary interchanges servicing major truck routes in the northeast region of the United States, and its facilities, known as “All American Plazas,” offer a broad range of products, services, and amenities, including diesel fuel, gasoline, home-style restaurants, truck washes, truck preventive maintenance centers, and retail merchandise stores that market primarily to professional truck drivers and other highway motorists.



**The Acquisition**

-5-

---

The asset purchase agreement provides for the acquisition by us of substantially all of All American's assets. We will assume all of All American's liabilities, except for its debt liabilities. The asset purchase agreement has an effective date of June 16, 2005. We will enter into a number of leases with All American for each of its 11 multi-service truck stops. All America intends that the rental payments under such leases be used to service All American's debt obligation on its properties. We will issue 11,666,667 restricted shares of our restricted common stock, par value \$.001 per share, at \$3.00 per share to purchase the All American business an aggregate purchase price of \$35,000,000. All American has agreed to escrow up to 2.5 million (but not less than 1.67 million) shares of common stock which will be cancelled on a share for share basis for each share of common stock which we issue in connection with certain convertible debenture obligations which we will assume. As of April 11, 2006, our common stock was valued at \$9.17 per share.

All American and we plan to complete the acquisition promptly after the special meeting, provided that:

- our stockholders have approved the asset purchase agreement; and
- the other conditions specified in the asset purchase agreement have been satisfied or waived.

The asset purchase agreement is included as Annex A to this proxy statement. We encourage you to read the asset purchase agreement in its entirety. See "Asset Purchase Agreement."

## **The Financing**

Pursuant to the terms of the Securities Purchase Agreement dated as of July 12, 2005 (the "SPA") among us and the various purchaser parties named therein, the purchasers purchased debentures in the aggregate amount of \$2.5 Million Dollars evidenced by a Variable Rate Convertible Debenture also dated July 12, 2005 (the "Debentures"). The Debentures are scheduled to be repaid within two years from the date of issuance, subject to the occurrence of an event of default, with interest payable at the rate per annum equal to the LIBOR for the applicable interest period, plus 4% payable on a quarterly basis on April 1st, July 1st, October 1st and January 1st, beginning on the first such date after the date of issuance of the Debentures. The Debentures may be converted at the option of the various purchasers into shares of our common stock at a conversion price of \$6.50 per share. In addition, the purchasers shall have the right to receive five (5) year warrants to purchase 192,308 of common stock at an exercise price of \$7.15 per share. Pursuant to the SPA, we shall also have an optional redemption right (which right shall be mandatory upon the occurrence of an event of default) to repurchase all of the Debentures for 125% of the face amount of the Debentures plus all accrued and outstanding interest and expenses, as well as a right to repurchase all of the Debentures in the event of the consummation of a new financing in which we sell securities at a purchase price that is below the conversion price of \$6.50 per share. The conversion price for the Debentures may be adjusted for various customary events effecting the capitalization of the Company such as stock splits.

On November 16, 2005, certain rights of the Purchasers to make additional investments in us were removed and replaced with warrants to purchase our common stock. Under the terms of such November 16, 2005 amendment, up to 5,250,000 shares of common stock may be obtained by the Purchasers upon the exercise of such warrants. Such warrants have an exercise price of \$7.50 per share.

Pursuant to the Registration Rights Agreement among the parties, the Purchasers shall have demand registration rights with respect to all shares of our common stock obtained by them through the conversion of the Debentures, and we filed an effective Registration Statement on Form S-1/A on December 20, 2005 registering the resale of such common stock obtain upon conversion of such debentures and a portion of the warrants described above.

The proceeds of the July 12, 2005 financing was used for working capital purposes and to make a loan to All

American Plazas, Inc. On July 27, 2005, the Company made a loan in the amount of \$1,730,000 to All American. All American executed and delivered a Promissory Note for the full amount of the loan in favor of our company. Under the terms of the Promissory Note, the outstanding principal of the loan bears interest at the rate of 3.5% per annum. The maturity date of the Promissory Note has been extended to March 30, 2006 which has since been further extended to the earlier of either the closing of the acquisition or the closing of a financing transaction relating to the conveyance of All American's real estate assets to the Company.

-6-

---

The documents relating to the financing are attached as exhibits to the Current Reports on Form 8-K, filed July 15, 2005 and November 18, 2005 with the SEC. We recommend that you review these documents.

### **The Charter Amendment**

Our Certificate of Incorporation, as amended, currently authorizes the issuance of up to 20,000,000 shares of stock of which, the total number of shares of common stock that are authorized to be issued is 10,000,000. Our Board has approved, subject to stockholder approval, an amendment to our charter to increase the number of authorized shares of stock to 85,000,000, of which, the total number of shares of common stock that are authorized to be issued is 75,000,000. The additional authorized shares of common stock, if and when issued, would have the same rights and privileges as the shares of common stock previously authorized. A copy of the proposed amendment to our charter is attached to this proxy statement as Annex C.

As of May 9, 2006, there were 3,128,923 shares of our common stock outstanding.

In the event that the acquisition is approved by the appropriate vote of the stockholders, additional shares of our common stock will be issued to All American as described in this proxy statement. The additional shares of common stock authorized by the charter amendment could also be issued at the direction of our Board from time to time for any proper corporate purpose, including, without limitation, the acquisition of other businesses, the raising of additional capital for use in the Company's business, a split of or dividend on then outstanding shares or in connection with any employee stock plan or program. The holders of shares of common stock do not presently have preemptive rights to subscribe for any of our securities and holders of common stock will not have any such rights to subscribe for the additional common stock proposed to be authorized. Any future issuances of authorized shares of common stock may be authorized by the Board without further action by the stockholders.

Although our Board will issue common stock only when required or when the Board considers such issuance to be in our best interests, the issuance of additional common stock may, among other things, have a dilutive effect on the earnings per share (if any) and on the equity and voting rights of stockholders. Furthermore, since Delaware law requires the vote of a majority of shares of each class of stock in order to approve certain mergers and reorganizations, the proposed amendment could permit the Board to issue shares to persons supportive of management's position. Such persons might then be in a position to vote to prevent a proposed business combination that is deemed unacceptable to the Board, although perceived to be desirable by some stockholders, including, potentially, a majority of stockholders. This could provide management with a means to block any majority vote which might be necessary to effect a business combination in accordance with applicable law, and could enhance the ability of our Directors to retain their positions. Additionally, the presence of such additional authorized but unissued shares of Common Stock could discourage unsolicited business combination transactions that might otherwise be desirable to stockholders.

Except for (i) shares which may be issued in connection with the acquisition, (ii) shares of common stock reserved for issuance under our stock option plans and (iii) shares of common stock which we would be required to issue upon the exercise of outstanding warrants (including warrants in connection with the financing, if approved by the stockholders), the Board has no current plans to issue additional shares of common stock. However, our Board believes that the benefits of providing it with the flexibility to issue shares without delay for any proper business purpose, including as an alternative to an unsolicited business combination opposed by the Board, outweigh the possible disadvantages of dilution and discouraging unsolicited business combination proposals and that it is prudent and in the best interests of stockholders to provide the advantage of greater flexibility which will result from the charter amendment.

Accordingly, the Board has voted unanimously "FOR" the adoption of the Charter Amendment and has submitted this proposal to you for consideration and vote.

**Special Meeting of Our Stockholders**

-7-

---

*Date, time and place.* The special meeting of our stockholders will be held at 10:00 a.m., eastern time, on \_\_\_\_\_, 2006, at Able Energy, Inc., 1140 6<sup>th</sup> Avenue, Suite 1801, New York, NY to vote on the proposal to approve the acquisition proposal.

### **Approval of All American's Stockholders**

All American will concurrently solicit the approval of its shareholders to consummate the transactions contemplated in the Asset Purchase Agreement.

### **Voting Power; Record Date**

You will be entitled to vote or direct votes to be cast at the special meeting if you owned shares of our common stock as of the close of business on \_\_\_\_\_, 2006, which is the record date for the special meeting. You will have one vote for each share of common stock you owned at the close of business on the record date.

### **Vote Required to Approve the Acquisition Proposal and the Financing**

The approval of the issuance of our common stock which will result in the acquisition of the All American assets will require the affirmative vote of at two-thirds of the eligible votes cast, in person or by proxy, at the special meeting of those stockholders. All American currently owns approximately 32% of our common stock which, according to Section 203 of the Delaware General Corporation Law, a company which owns greater than 15% of a company is an "interested stockholder". For the purposes of the acquisition, All American is an "interested stockholder" and, hence, ineligible to vote in favor of the acquisition.

The approval or ratification by the stockholders of the financing relating to our issuance of certain debentures and warrants will require the affirmative vote of a majority of the votes cast, in person or by proxy, at the special meeting of the stockholders.

### **Appraisal or Dissenters Rights**

No appraisal rights are available under the Delaware General Corporation Law for our stockholders in connection with the acquisition proposal.

### **Proxies**

Proxies may be solicited by mail, telephone or in person.

If you grant a proxy, you may still vote your shares in person if you revoke your proxy before the special meeting.

### **Costs of Solicitation of Proxies**

The cost of soliciting proxies, including expenses in connection with preparing and mailing this proxy statement, will be borne by us. In addition, we will reimburse brokerage firms and other persons representing beneficial owners of our common stock for their expenses in forwarding proxy material to such beneficial owners. Solicitation of proxies by mail may be supplemented by telephone, telegram, telex and personal solicitation by our directors, officers or employees. No additional compensation will be paid for such solicitation.

This proxy statement and the accompanying proxy are being mailed on or about \_\_\_\_\_, 2006 to all stockholders entitled to notice of, and to vote at, the special meeting.

### **Stock Ownership**

Edgar Filing: ABLE ENERGY INC - Form PRER14A

Of the 3,128,923 outstanding shares of our common stock, our officers and directors, who directly own an aggregate of approximately 1.0% of our outstanding shares of common stock, have agreed to vote such shares in favor of the acquisition proposal.

-8-

---

## **Our Board of Directors' Recommendation**

After careful consideration, our board of directors has determined unanimously that both the acquisition proposal and the financing are fair to, and in the best interests of our stockholders.

In reaching its decision relating to the acquisition, the board considered the opinion of Ehrenkrantz King Nussbaum Inc., that, as of the date of its opinion, and based on conditions that existed as of that date, upon and subject to the considerations described in its opinion and based upon such other matters as Ehrenkrantz King Nussbaum Inc. considered relevant, the consideration to be provided by us in connection with the All American acquisition is fair to our current stockholders from a financial point of view. See "Fairness Opinion."

With respect to the financing, our board also considered two alternative proposals regarding similar financing which were offered by other parties and assessed the Company's ability to service such debt or convert such debt into equity and determined after consideration in several meetings that the terms of the financing were the most favorable terms to the Company.

Our board also considered certain operational difficulties which may arise from the acquisition. For example, our current business does not involve the operation or management of trucking plazas so significant administrative expenses may be incurred to integrate the operating businesses of the combined companies. In addition, our current business is cyclical in nature (cold weather months are historically the peak business months for the home heating oil business) whereas the truck plaza operation and management business is year-around, and therefore integration of the two businesses may require a period of administrative and managerial adjustment for a year-around operation. We currently offer one primary product in a largely discrete geographic market whereas All American operates over a more widespread geographic region and offers various product lines, hence additional administrative costs and may be required to expand our business in order to take full advantage of the distribution advantages offered by the acquisition. After consideration of these factors, our board determined that the advantages offered by the acquisition were greater than the likelihood of one-time or short-term transition expenses.

Accordingly, our board has unanimously approved and declared advisable the acquisition and unanimously recommends that you vote or instruct your vote to be cast "FOR" the approval of the acquisition proposal.

## **Interests of Our Directors and Officers in the Acquisition or Financing**

When you consider the recommendation of our board of directors that you vote in favor of adoption of the acquisition proposal, you should keep in mind that certain of our directors and officers have interests in the acquisition that are different from, or in addition to, your interest as a stockholder.

Frank Nocito, our Vice President, Business Development, has an interest in All American. Since 2004, Mr. Nocito has been Vice President of All American. In 2003, Mr. Nocito, as Vice President of All American Industries Corp., a nominee holding company created for purposes of such acquisition, acquired all of the issued and outstanding stock of All American. In 2004, Mr. Nocito and his wife, Sharon Chelednik, created, for the benefit of their family members, including seven children, the Chelednik Family Trust, and all the issued and outstanding stock of All American was transferred to this Trust. In addition, pursuant to an agreement between Gregory Frost, our CEO and Chairman, and this Trust, Mr. Frost, through Crystal Heights, LLC, an entity controlled by Mr. Frost, is also the beneficial holder of 15.05% of the outstanding common stock of All American. Mr. Frost and Jonathan Austern are co-trustees of the Chelednik Family Trust.

It is anticipated that our current board of directors will remain on the board following the acquisition. In addition, Richard A. Mitstifer, who is currently the President of All American, will join of our board of directors after the acquisition, and become an officer of the Company i.e. Executive Vice President of the new All American division or subsidiary, and Christopher Westad will be our President.



**Interests of Directors and Officers of All American in the Acquisition or Financing**

-9-

---

You should understand that some of the current directors and officers of All American have interests in the acquisition that are different from, or in addition to, your interest as a stockholder. In particular, Richard A. Mitstifer, who is currently the President of All American, will become our Executive Vice President of our All American division or subsidiary. Gregory D. Frost, our CEO, currently holds a 15% interest in All American. Also, Sharon Chelednik, All American's Vice Chairman of the board of directors, could be deemed to be a the majority shareholder of All American through the Chelednik Family Trust, so it is possible that potential conflicts of interest may arise with respect to her obligations as both a director and shareholder of All American. Note, however, that in response to certain regulatory questions relating to the acquisition, both All American and the Chelednik Family Trust have agreed to a voting lock-up of any shares they receive in the acquisition with respect to any matters relating to Board membership until such time as All American and the Chelednik Family Trust no longer hold a majority of our issued and outstanding shares of common stock.

### **Conditions to the Completion of the Acquisition**

The obligations of All American and us to complete the acquisition are subject to the satisfaction or waiver of specified conditions before completion of the acquisition, including the following:

#### *Conditions to our obligations:*

- receipt of stockholder approval from our stockholders;
- the accuracy of the representations and warranties made by All American in the asset purchase agreement as of the closing date and the absence of material adverse changes to the assets, liabilities, business, finances or operations of All American prior to the closing;
- the performance of and compliance with all of the covenants made, and obligations to be performed, by All American pursuant to the asset purchase agreement at or prior to the closing, including the delivery of certain required documents;
- the requisite third-party consents shall have been obtained; and
- the absence of claims by third parties regarding the ownership of a material portion of the assets being acquired (other than as disclosed in the asset purchase agreement) or the entitlement to a portion of the purchase price.

#### *Conditions to the obligations of All American:*

The obligation of All American to complete the acquisition is further subject to the following conditions:

- the accuracy of the representations and warranties made by us in the asset purchase agreement as of the closing date and the absence of material adverse changes to our assets, liabilities, business, finances or operations taken as a whole prior to the closing;
- receipt of stockholder approval from All American's shareholders;
- the performance of and compliance with all of the covenants made, and obligations to be performed, by us pursuant to the asset purchase agreement

at or prior to the closing, including the delivery of certain required documents;

- the requisite third-party consents shall have been obtained; and
- the absence of any injunction or other order that prohibits the sale of a material portion of the assets being acquired by us.

**Termination, Amendment and Waiver**

-10-

---

The asset purchase agreement may be terminated at any time prior to the completion of the acquisition, whether before or after receipt of the approval of our stockholders, by mutual written consent of us and All American.

In addition, either All American or we may terminate the asset purchase agreement if:

- a material breach of any representation, warranty or obligation contained in the asset purchase agreement exists that may not be cured within 30 days written notice of such breach; or
- any condition contained in the asset purchase agreement have not been fulfilled.

If permitted under applicable law, either All American or we may waive conditions for our own respective benefit and consummate the acquisition even though one or more of these conditions have not been met. We cannot assure you that all of the conditions will be satisfied or waived or that the acquisition will occur. In the event we waive a material condition to the closing on the part of All American's obligations, we will amend the proxy statement accordingly and resolicit proxies under such amended proxy statement.

### **Regulatory Matters**

The acquisition and the transactions contemplated by the asset purchase agreement are not subject to any federal or state regulatory requirement or approval.

### **SELECTED FINANCIAL INFORMATION**

We are providing the following financial information to assist you in your analysis of the financial aspects of the acquisition. The All American historical information is derived from the audited financial statements of All American as of and for each of the years ended September 30, 2005, 2004, 2003, 2002 and 2001 and its unaudited financial statements for the six month period ended March 31, 2005. Our historical information is derived from our unaudited financial statements for the three and nine month period ended March 31, 2005 and our audited financial statements as of June 30, 2005, 2004, 2003, 2002 and 2001. The information is only a summary and should be read in conjunction with each company's historical consolidated financial statements and related notes contained elsewhere herein. The historical results included below and elsewhere in this proxy statement are not indicative of the future performance of either All American or us.

-11-

---

		<b>Able Energy Inc. and Subsidiaries</b>				
		<b>For the fiscal year ended June 30,</b>				
<b>Results from Continuing Operations</b>	<b>Nine Month Period Ended March 31, 2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>
Net Sales	\$61,736,954	\$61,964,825	\$42,882,327	\$43,409,488	\$24,851,039	\$18,189,597
Operating Income	(1,812,990)	(1,142,598)	(1,971,745)	328,463	(1,852,533)	(717,763)
Income (loss) from continuing operations	(4,763,555)	(2,110,257)	(2,700,102)	53,322	(1,947,539)	(725,223)
Depreciation and Amortization	974,457	1,183,144	1,152,906	1,070,046	1,027,144	1,183,144
Income (loss) per share	(1.76)	(.99)	(1.34)	.03	(.97)	(.36)
Book Value per share						
Weighted Average Number of Shares Outstanding - Basic	2,700,748	2,140,813	2,013,250	2,012,708	2,001,332	2,140,813
		<b>As of the year ended June 30,</b>				
<b>Balance Sheet Data</b>	<b>As of December 31, 2005</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>
Total Assets	\$15,523,171	\$12,754,560	\$12,443,695	\$12,612,582	\$10,477,891	\$11,756,530
Long Term Obligations	3,927,360	4,146,095	3,724,691	3,616,461	1,657,071	1,828,401
Total Stockholders Equity	4,883,846	2,058,115	3,398,051	3,487,292	3,261,140	4,758,932

1. The results of operation data for the years ended June 30, 2003 and June 30, 2002 have been adjusted to reflect the discontinued operations of Able Propane, LLC. For further information regarding this adjustment, see Note 23 to the financial statements contained in our Annual Report on Form 10-K for the year ended June 30, 2004, filed by us with the SEC on September 28, 2004.

2. Due to the Company changing its fiscal year during 2001, the results of operation for the year ended June 30, 2001 in the above table are for the period January 1, 2001 to June 30, 2001.

3. We have never paid a cash dividend on our common stock. It is the current policy of our Board of Directors to retain any earnings to finance the operations and expansion of our business. The payment of dividends in the future will depend upon our earnings, financial condition and capital needs and on other factors deemed pertinent by the Board of Directors.

#### **ALL AMERICAN HISTORICAL FINANCIAL INFORMATION**

		<b>All American Plazas, Inc. and Subsidiaries</b>				
		<b>For the fiscal year ended September 30,</b>				
<b>Results from Continuing Operations</b>	<b>Six Month Period Ended March</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>

## Edgar Filing: ABLE ENERGY INC - Form PRER14A

	<b>31, 2006</b>					
Net Sales	\$83,865,566	\$149,625,495	\$131,017,165	\$124,395,490	\$117,869,866	\$137,265,691
Operating Income	(1,381,077)	357,450	509,673	(408,666)	456,874	(301,093)
Income (loss) from continuing operations	(4,040,170)	(1,506,491)	53,705	(901,266)	(319,783)	753,649
Depreciation and Amortization	1,377,441	2,105,489	1,825,940	1,752,533	1,734,589	7,748,446
Income (loss) per share	(182.39)					
Book Value per share						

-12-

Weighted Average Number of Shares Outstanding - Basic	DUE FROM AAP	26,117	26,117	26,117	26,117	26,117
		<b>As of the year ended September 30,</b>				
<b>Balance Sheet Data</b>	<b>As of March 31, 2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>
Total Assets	\$72,536,504	\$62,249,073	\$35,320,863	\$26,826,123	\$27,525,997	\$30,719,056
Long Term Obligations	6,796,641	13,201,188	14,005,637	14,171,591	15,044,437	17,925,627
Total Stockholders Equity	704,315	4,744,486	11,497,432	4,895,755	5,792,021	6,164,224

### SELECTED UNAUDITED PRO FORMA COMBINED FINANCIAL INFORMATION

Set forth below is selected pro forma financial information for the year ended June 30, 2005 and the six month period ended December 31, 2005, which reflects our acquisition of the assets of All American. The information presented below reflects the purchase method of accounting and is intended to provide you with a better picture of what our businesses might have looked like had we actually completed the acquisition of the assets of All American. The combined financial information may have been different had the companies actually been combined. The selected unaudited pro forma combined financial information does not reflect the effect of asset dispositions, if any, or cost savings that may result from the acquisition. You should not rely on the selected unaudited pro forma combined financial information as being indicative of the historical results that would have occurred had we completed the acquisition or the future results that may be achieved after the acquisition of All American's assets. The following selected unaudited pro forma combined financial information has been derived from, and should be read in conjunction with, the unaudited pro forma condensed combined financial statements and related notes thereto included in Annex E of this proxy statement.

<b>Able Energy and All American Plazas, Inc. - Pro Forma Consolidated</b>		
<b>Results from Continuing Operations</b>	<b>For the fiscal year Ended June 30, 2005</b>	<b>For the Nine Month Period Ended March 31, 2006</b>
Net Sales	\$211,290,320	\$186,582,769
Operating Income	\$24,767,204	\$17,275,003
Income (loss) from continuing operations	\$(4,564,817)	\$(7,347,497)
Depreciation and Amortization	\$3,288,633	\$2,817,034
Income (loss) per share	\$(0.26)	\$(0.68)
Weighted Average Number of Shares Outstanding - Basic	13,807,480	14,828,953
<b>Balance Sheet Data</b>	<b>As of June 30, 2005</b>	<b>As of March 31, 2006</b>
Total Assets	\$61,593,333	\$64,407,378
Long Term Obligations	\$1,239,458	\$4,155,939
Total Stockholders Equity	\$37,058,115	\$43,333,846

### RISK FACTORS

*You should carefully consider the following risk factors, together with all of the other information included in the statement, before you decide whether to vote or instruct your vote to be cast to adopt the acquisition proposal.*

*Unless expressly stated otherwise, these risk factors assume the consummation of the transactions contemplated by the acquisition and the ratification by the stockholders of the financing (July 2005 sale of Debentures by us). Unless otherwise indicated in the context, all references in this section (Risk Factors) and this section alone to “us”, “we”, “our” be deemed to reflect conditions existing following the proposed acquisition.*

-13-

---



### **Limited Operating History; Management of Growth; Substantial Long-Term Debt**

Able Energy, Inc. was incorporated in March 1997 to act as a holding company for its operating subsidiaries. Our remaining subsidiaries have limited operating histories upon which evaluation of their prospects can be made. Although All American has been in business as a owner and/or operator of trucking stops for over 20 years, we are purchasing the assets of All American and its operating business and there are no guarantees that current management or employees will agree to continue their respective employment with us. Furthermore, there can be no assurance that the subsidiaries, other than Able Oil, will generate substantial revenues or attain profitable operations.

Our growth has required, and will continue to require, increased investment in management personnel, financial and management systems and controls and facilities. Our past expansion has placed, and any future expansion would place, significant demands on our administrative, operational, financial and other resources. We intend to continue to expand its business and operations, including entry into new markets, that will place additional strain on our management and operations. Our future operating results will depend, in part, on its ability to continue to broaden our senior management group and administrative infrastructure, and its ability to attract, hire and retain skilled employees. Our success will also depend on the ability of our officers and key employees to continue to implement and improve our operational and financial control systems and to expand, train and manage its employee base. In addition, our future operating results will depend on our ability to expand its sales and marketing capabilities and expand its customer support operations commensurate with its growth, should such growth occur. If our revenues do not increase in proportion to its operating expenses, our management systems do not expand to meet increasing demands, we fail to attract, assimilate and retain qualified personnel, or our management otherwise fails to manage our expansion effectively, there would be a material adverse effect on our business, financial condition and operating results. As of March 31, 2006, we had long term liabilities of \$3,927,360. Our ability to satisfy such obligations will depend on our future operating performance, which will be affected by, among other things, prevailing economic conditions and financial, business and other factors, many of which are beyond our control. There can be no assurance that we will be able to service its indebtedness. If we are unable to service its indebtedness, it will be forced to examine alternative strategies that may include actions such as reducing or delaying capital expenditures, restructuring or refinancing its indebtedness, or the sale of assets or seeking additional equity and/or debt financing. There can be no assurance that any of these strategies could be effected on satisfactory terms, if at all.

### **Seasonal Factors**

Following the acquisition, substantially all of our revenues and income will be derived from the home heating oil business and the truck stop business. Our home heating oil business is seasonal and is and will remain following the acquisition a material portion of our business. A substantial portion of the home heating oil business is conducted during the fall and winter months. Weather patterns during the winter months can have a material adverse impact on our revenues. Although temperature levels for the heating season have been relatively stable over time, variations can occur from time to time, and warmer than normal winter weather will adversely affect the results of the Company's fuel oil operations.

Approximately 65% of our revenues from our home heating oil business are earned and received from October through March. During the spring and summer months, revenues from the sale of diesel and gasoline fuels increase due to the increased use of automobiles and construction apparatus.

This seasonality will be less pronounced following the acquisition than prior to the acquisition, but our revenues from the home heating oil business is still expected to constitute 25-33% of the total revenues of the post-acquisition company. Thus, our company will still be affected by seasonality issues.

### **Fuel Pricing and the Effect on Profitability**

Disruption of fuel supply and fuel pricing would adversely affect our profitability. For instance sharp increases in fuel prices at truck stops historically tend to lead to a temporary decline in fuel margins. Similarly, increases in the pricing for home heating oil will also adversely affect our profit margins associated with our home

-14-

---

heating oil business since we may not be able to pass on our proportional increases to our home heating oil customers. Fuel prices have risen sharply recently and may continue to rise.

Other factors which may have a significant effect on fuel prices include: natural disasters, particularly those which have devastated the Gulf Coast (areas that are major producers, distributors or refiners of petroleum-based products); major global conflicts, especially those involving the U.S. and/or oil producing countries, strikes or political conflict in oil producing countries.

In the future, interruptions in the world fuel markets may cause shortages in, or total curtailment of, fuel supplies. Moreover, a substantial portion of the oil refining capacity in the United States is controlled by major oil companies. These companies, for various reasons (for e.g. new standards imposed by EPA) could in the future decide to limit the amount of fuel sold to independent operators such as us. Any material decrease in the volume of fuel sold for any extended period of time could have a material adverse effect on the results of operations. Similarly, an extended period of instability in the price of fuel could adversely affect our results.

In addition, fuel supply could also impact upon our other operations, including our restaurant and non-fuel operations. Therefore any significant reductions in fuel supplies or fuel volume would materially affect our results.

### **Growth Dependent Upon Unspecified Acquisitions**

Our growth strategy includes the acquisition of existing fuel distributors and truck stops. There can be no assurance that our will be able to identify new acquisition candidates or, even if a candidate is identified, that we will have access to the capital necessary to consummate such acquisitions. Furthermore, the acquisition of additional companies involves a number of additional risks. These risks include the diversion of management's attention from our operations, possible difficulties with the assimilation of personnel and operations of acquired companies, the amortization of acquired intangible assets, and the potential loss of key employees of acquired companies. The future success of our business will depend upon our ability to manage its growth through acquisitions.

### **Government Regulation**

Federal, state and local laws, particularly laws relating to the protection of the environment and worker safety, can materially affect our operations. The transportation of fuel oil, diesel fuel, propane and gasoline is subject to regulation by various federal, state and local agencies, including the U.S. Department of Transportation ("DOT"). These regulatory authorities have broad powers and we are subject to regulatory and legislative changes that can affect the economies of the industry by requiring changes in operating practices or influencing demand for, and the cost of providing, its services. Additionally, we are subject to random DOT inspections. Any material violation of DOT rules or the Hazardous Materials Transportation Act may result in citations and/or fines on us. In addition, we depend on the supply of petroleum products from the oil and gas industry and, therefore, we may be affected by changing taxes, price controls and other laws and regulations relating to the oil and gas industry generally. We cannot determine the extent to which future operations and earnings may be affected by new legislation, new regulations or changes in existing regulations.

The technical requirements of these laws and regulations are becoming increasingly expensive, complex and stringent. These laws may impose penalties or sanctions for damages to natural resources or threats to public health and safety. Such laws and regulations may also expose us to liability for the conduct or conditions caused by others. Sanctions for noncompliance may include revocation of permits, corrective action orders, administrative or civil penalties and criminal prosecution. Certain environmental laws provide for joint and several liabilities for remediation of spills and releases of hazardous substances. In addition, companies may be subject to claims alleging personal injury or property damages as a result of alleged exposure to hazardous substances, as well as damage to natural

resources.

**Potential Environmental Liability**

-15-

---

Our operations are subject to all of the operating hazards and risks that are normally incidental to handling, storing, transporting and delivering fuel oils, gasoline, diesel and propane, which are classified as hazardous materials. We face potential liability for, among other things, fuel spills, gas leaks and negligence in performing environmental clean-ups for our customers. Specifically, we maintain fuel storage facilities on sites owned or leased by us, and could incur significant liability to third parties or governmental entities for damages, clean-up costs and/or penalties in the event of certain discharges into the environment. Such liability can be extreme and could have a material adverse effect on our financial condition or results of operations. Although we believe that it is in compliance with existing laws and regulations, there can be no assurance that substantial costs for compliance will not be incurred in the future. Any substantial violations of these rules and regulations could have an adverse affect upon our operations. Moreover, it is possible that other developments, such as more stringent environmental laws, regulations and enforcement policies thereunder, could result in additional, presently unquantifiable, costs or liabilities to us.

### **Litigation**

We are not currently involved in any legal proceeding that is likely to have a material adverse effect on our results of operations or our financial condition. From time to time, we may become a party to litigation incidental to its business. There can be no assurance that any financial legal proceedings will not have a material adverse affect on us.

### **No Assurance of Adequate Insurance Protection**

We maintain insurance policies in such amounts and with coverage and deductibles as our management believes are reasonable and prudent. There can be no assurance, however, that such insurance will be adequate to protect us from liabilities and expenses that may arise from claims for personal and property damage arising in the ordinary course of business or that such levels of insurance will be maintained by us or will be available at economic prices.

### **Franchising**

We intend to expand franchise arrangements to expand its operations and revenue base. Our future growth may be dependent upon new franchisees and the manner in which they operate and develop our locations to promote and develop our concept and our reputation for quality and value. In addition, because we believe that a potential franchisee's total estimated investment relating to an location for our home heating oil business is generally low, we may be more likely to attract franchisees with limited franchise experience and limited financial resources. As a result of its franchising activity, we are subject to Federal Trade Commission ("FTC") regulation and various state laws that govern the offer, sale and termination of, and refusal to renew, franchises. Several state laws also regulate substantive aspects of the franchisor-franchisee relationship. The FTC requires us to furnish prospective franchisees a franchise offering circular containing prescribed information. A number of states in which we might consider franchising also regulate the sale of franchises and require registration of the franchise offering circular with state authorities. Substantive state laws that regulate the franchisor-franchisee relationship presently exist in many states, and bills have been introduced in Congress from time to time which would provide for federal regulation of the franchisor-franchisee relationship in certain respects. The state laws often limit, among other things, the duration and scope of non-competition provisions and the ability of a franchisor to terminate or refuse to renew a franchise.

### **Trademarks and Service Marks**

We believe that our trademarks and service marks have significant value and are important to the marketing of its products and services, especially if we are successful in implementing our franchise program. There can be no assurance, however, that our proprietary marks do not or will not violate the proprietary rights of others, that our marks would be upheld if challenged or that we would not be prevented from using its marks, any of which could

have an adverse effect on us. In addition, there can be no assurance that we will have the financial resources necessary to enforce or defend its trademarks and service marks against infringement.

**Competition from Alternative Energy Sources (for Home Heating Oil Segment)**

-16-

---

Our retail home heating business competes for customers with suppliers of alternate energy products, principally natural gas and electricity. Every year, a small percentage of our oil customers convert to other home heating sources, primarily natural gas. In addition, we may lose additional customers due to conversions during periods in which the cost of its services exceeds the cost of alternative energy sources.

### **Concentration of Wholesale Suppliers for Home Heating Oil**

We have three supply contracts for the purchase of Number 2 Heating Oil, representing 10% of our annual heating fuel purchases. We purchase its remaining fuel supplies on the spot market. We satisfy our inventory requirements with seven different suppliers, the majority of which have significant domestic fuel sources, and many of which have been suppliers to us for over 5 years. Our current suppliers are Conective Oil Corporation, Sprague Energy, Petrocom Energy Group Ltd., Gulf-Catamont, Velerio, Rio, TransMontaigne Inc., Center Marketing, Inc. and Sun Co., Inc. (R&M). We monitor the market each day and determines when to purchase its oil inventory and from whom.

Three of these suppliers (Conectiv Energy, Petrocom Energy and Rio Energy) provided Able Oil with approximately 60% of its heating oil requirements for the year ended June 30, 2004.

TransMontaigne, Inc. provided Able Melbourne with approximately 99% of its diesel fuel product requirements for the year ended June 30, 2005 and one major suppliers provided Able Melbourne with approximately 99% of its lubricant and related product requirements for the year ended June 30, 2005.

Management believes that if our supply of any of the foregoing products was interrupted, we would be able to secure adequate supplies from other sources without a material disruption in its operations. However, there can be no assurance that adequate supplies of such products will be readily available in the future.

### **Absence of Written Agreements**

Approximately 50% of our home heating customers do not have written agreements with us and can terminate services at any time, for any reason. Although we have never experienced a significant loss of its customers, if we were to experience a high rate of terminations, our business and financial condition could be adversely affected.

### **Risks Associated with Expansion into New Markets**

A significant element of our future growth strategy involves the expansion of our business into new geographic and product markets. Expansion of our operations depend, among other things, the success of our marketing strategy in new markets, successfully establishing and operating new locations, hiring and retaining qualified management and other personnel, and obtaining adequate financing for vehicle and site purchases and working capital purposes.

### **Dependence on Key Personnel**

Our future success will depend, to a significant extent, on the efforts of key management personnel, including Gregory Frost, our CEO and Chairman, Christopher Westad, our President, and Steven Vella our Chief Financial Officer. The loss of one or more of these key employees could have a material adverse effect on our business. In addition, we believe that its future success will depend, in large part, upon its continued ability to attract and retain highly qualified management, technical and sales personnel. There can be no assurance that we will be able to attract and retain the qualified personnel necessary for its business.

### **Restaurants (Truck Plaza Segment Only)**

Each of our truck stops includes a restaurant which provides an 'All American Menu'. By operating restaurant facilities we will face risks relating to:

-17-

---



- our ability to obtain and maintain necessary governmental licenses, permits, and approvals relating to the preparation and sale of food;
  - health inspection scores;
  - food quality;
- the availability and timely delivery of high-quality fresh ingredients, including fresh produce, dairy products, and meat; and
  - food-borne illnesses.

If we are unable to effectively manage these risks, we may experience negative publicity related to these matters which may impact negatively on the our brand name and image. Such negative publicity could reduce guest traffic at our truck stop restaurants and subsequently affect the results of the operations.

### **Competition**

The truck stop industry is highly competitive and fragmented, and our competitors may have greater resources or other competitive advantages. Certain of our competitors have substantially financial and marketing resources than we do. If our competitors adopt pricing strategies or marketing policies that we do not meet, if they provide products or services that we do not offer, or if we are otherwise unable to compete effectively, our competitors could gain market share and have an adverse effect on our operating results.

Our home heating business is also highly competitive. In addition to competition from alternative energy sources, we compete with distributors offering a broad range of services and prices, from full service distributors similar to ours, to those offering delivery only. Competition with other companies in the retail home heating industry is based primarily on customer service and price. Longstanding customer relationships are typical in the home heating industry. Many companies, including ours, deliver fuel to their customers based upon weather conditions and historical consumption patterns without the customers making an affirmative purchase decision each time fuel is needed. In addition, most companies, including ours, provide equipment repair service on a 24 hour a day basis, which tends to build customer loyalty. We compete against companies that may have greater financial resources than ours. As a result, we may experience difficulty in acquiring new retail customers due to existing relationships between potential customers and other retail home heating distributors.

### **Highly Dependent on Financial Condition of Trucking Industry (Truck Plaza Segment Only)**

Our business is dependent upon the trucking industry in general and upon long-haul trucks in particular. In turn, the trucking industry is dependent on economic factors, such as the level of domestic economic activity and interest rates and operating factors such as fuel prices and fuel taxes, over which we have no control and which could contribute to a decline in truck travel. The long-haul trucking business is also a mature industry that has historically been susceptible to recessionary downturn. Available data indicate that diesel consumption by the trucking industry has grown more slowly than trucking ton-miles, as technological improvements in truck engines have increased their fuel efficiency. In addition, many small trucking companies have filed for bankruptcy protection in recent years. A decline in operations by the long-haul trucking industry would adversely affect us.

### **Domestic Terrorist Attack**

A domestic terrorist incident, particularly involving a truck, could produce adverse effects on us in several ways, including:

- a reduction in the volume of truck traffic for more than a brief period;
- bankruptcy of certain truck companies; and
- the imposition of additional trucking regulations, increasing expenses of truck operations and businesses that service trucks or provide overnight facilities for trucks and truck drivers, such as the services that we provide - for e.g. extra

security measures for parked trucks or trucks that are on our home heating delivery routes.

**Other Risk Factors**

-18-

---

Future operations may be impacted by a number of factors that could cause our actual financial results to differ. These factors include worldwide economic and political conditions, terrorist's activities, industry special factors, and governmental agencies.

### **FORWARD-LOOKING STATEMENTS**

We believe that some of the information in this proxy statement constitutes forward-looking statements within the definition of the Private Securities Litigation Reform Act of 1995. You can identify these statements by forward-looking words such as "may," "expect," "anticipate," "contemplate," "believe," "estimate," "intends," and "continue" or similar words. You should read statements that contain these words carefully because they:

- discuss future expectations;
- contain projections of future results of operations or financial condition; or
- state other "forward-looking" information.

We believe it is important to communicate our expectations to our stockholders. However, there may be events in the future that we are not able to accurately predict or over which we have no control. The risk factors and cautionary language discussed in this proxy statement provide examples of risks, uncertainties and events that may cause actual results to differ materially from the expectations described by us in our forward-looking statements, including among other things:

- changing interpretations of generally accepted accounting principles;
- outcomes of government reviews, inquiries, investigations and related litigation;
- continued compliance with government regulations;
- legislation or regulatory environments, requirements or changes adversely affecting the businesses in which All American is engaged;
- statements about industry trends;
- general economic conditions; and
- geopolitical events and regulatory changes.

You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this proxy statement.

All forward-looking statements included herein attributable to us or any person acting on either party's behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Except to the extent required by applicable laws and regulations, we undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this proxy statement or to reflect the occurrence of unanticipated events.

Before you grant your proxy or instruct how your vote should be cast or vote on the approval of the acquisition you should be aware that the occurrence of the events described in the "Risk Factors" section and elsewhere in this proxy

statement could have a material adverse effect on us upon completion of the acquisition.

**THE SPECIAL MEETING**

*The Special Meeting*

-19-

---

## Edgar Filing: ABLE ENERGY INC - Form PRER14A

We are furnishing this proxy statement to you as part of the solicitation of proxies by our board of directors for use at the special meeting in connection with the proposed acquisition. This proxy statement provides you with the information you need to know to be able to vote or instruct your vote to be cast at the special meeting.

### *Date, Time and Place*

The special meeting will be held at 10:00 a.m., Eastern time, on 10:00A.M., Eastern Time, on \_\_\_\_\_, 2006, at Able Energy, Inc., 1140 6<sup>th</sup> Avenue, Suite 1801, New York, New York, to vote on the acquisition proposal.

### *Purpose of the Special Meeting*

At the special meeting, the holders of our common stock are being asked to approve a proposal, for purposes of NASD Marketplace Rule 4350(i), to effect an issuance of our common stock which will result in the acquisition of All American Plazas, Inc., or All American, pursuant to the Asset Purchase Agreement, dated as of June 16, 2005, by All American and us.

Our board of directors:

- has unanimously determined that the acquisition proposal is fair to and in the best interests of the company and our stockholders;
- has considered the opinion of Ehrenkrantz King Nussbaum Inc. that, as of the date of its opinion, and based on conditions that existed as of that date, upon and subject to the considerations described in its opinion and based upon such other matters as Ehrenkrantz King Nussbaum Inc. considered relevant, the consideration to be paid by us in connection with the All American acquisition is fair to our current stockholders from a financial point of view;
  - has unanimously approved and declared advisable the acquisition proposal; and
- unanimously recommends that the holders of our common stock vote "FOR" the proposal to effect an issuance of our common stock which will result in the acquisition of All American.

### *Record Date; Who is Entitled to Vote*

The "record date" for the special meeting is \_\_\_\_\_, 2006. Record holders of our common stock at the close of business on the record date are entitled to vote or have their votes cast at the special meeting. On the record date, there were \_\_\_\_\_ outstanding shares of our common stock.

Each share of our common stock is entitled to one vote per share at the special meeting.

### *Voting Your Shares*

Each share of our common stock that you own in your name entitles you to one vote. Your proxy card shows the number of shares of our common stock that you own.

There are two ways to vote your shares of common stock at the special meeting:

- You can vote by signing and returning the enclosed proxy card. If you vote by proxy card, your "proxy," whose name is listed on the proxy card, will vote your shares as you instruct on the proxy card. If you sign and return the proxy card, but do not give instructions on how to vote your shares, your shares will be voted, as recommended by our board, "FOR" the approval of the acquisition proposal, the financing and the charter amendment.



- You can attend the special meeting and vote in person. We will give you a ballot when you arrive. However, if your shares are held in the name of your broker, bank or another nominee, you must get a proxy from the broker, bank or other nominee. That is the only way we can be sure that the broker, bank or nominee has not already voted your shares.

**IF YOU DO NOT VOTE YOUR SHARES OF COMMON STOCK IN ANY OF THE WAYS DESCRIBED ABOVE, IT WILL HAVE NO EFFECT ON THE ACQUISITION PROPOSAL OR THE FINANCING.**

### **Who Can Answer Your Questions About Voting Your Shares**

If you have any questions about how to vote or direct a vote in respect of your common stock, you may call Gregory D. Frost or Christopher Westad at (973) 625-1012.

### **No Additional Matters May Be Presented at the Special Meeting**

This special meeting has been called only to consider the approval of the acquisition proposal. Under our by-laws, other than procedural matters incident to the conduct of the meeting, no other matters may be considered at the special meeting, if they are not included in the notice of the meeting.

### **Revoking Your Proxy**

If you give a proxy, you may revoke it at any time before it is exercised by doing any one of the following:

- You may send another proxy card with a later date;
- You may notify either Gregory D. Frost, our CEO, or Christopher Westad, our President, in writing before the special meeting that you have revoked your proxy; and
- You may attend the special meeting, revoke your proxy, and vote in person.

### **Vote Required**

The approval of the acquisition of All American and the transactions contemplated by the asset purchase agreement will require the affirmative vote of a majority of the shares of our common stock present in person or by proxy and entitled to vote at the special meeting.

If you abstain from voting or do not vote, either in person or by proxy or by voting instruction, it will have no effect on the approval of the acquisition proposal or the financing.

### **Abstentions and Broker Non-Votes**

If your broker holds your shares in its name and you do not give the broker voting instructions, under the rules of the NASD, your broker may not vote your shares on the proposal to approve the acquisition of All American pursuant to the asset purchase agreement or the financing. If you do not give your broker voting instructions and the broker does not vote your shares, this is referred to as a “broker non-vote.” Abstentions and broker non-votes are counted for purposes of determining the presence of a quorum, and will have no effect on the acquisition proposal or the financing.

### **Solicitation Costs**

We are soliciting proxies on behalf of our board of directors. This solicitation is being made by mail but also may be made by telephone or in person. We and our respective directors and officers may also solicit proxies in person, by telephone or by other electronic means. These persons will not be paid for doing this.

We have not hired a firm to assist in the proxy solicitation process but may do so if it deems this assistance necessary. We will pay all fees and expenses related to the retention of any proxy solicitation firm.

-21-

---



We will ask banks, brokers and other institutions, nominees and fiduciaries to forward our proxy statement materials to their principals and to obtain their authority to execute proxies and voting instructions. We will reimburse them for their reasonable expenses.

### **Stock Ownership**

Of the 3,042,655 outstanding shares of our common stock, All American, who owns approximately 32% of our common stock, and our officers and directors, who own an aggregate of approximately 1.0% of our outstanding shares of common stock, have agreed to vote such shares in favor of the acquisition proposal.

## **THE ACQUISITION PROPOSAL**

The discussion in this proxy statement of the acquisition and the principal terms of the asset purchase agreement dated as of June 16, 2005, by and between All American and us is subject to, and is qualified in its entirety by reference to, the asset purchase agreement. A copy of the asset purchase agreement is attached as Annex A to this proxy statement and is incorporated in this proxy statement by reference.

### **General Description of the Acquisition**

Pursuant to the asset purchase agreement, we will acquire substantially all of the assets of All American, including an option to purchase All American's real estate properties. We will also enter into leases to occupy each of All American's owned trucking plazas (as further described in this proxy). The aggregate amount of rental payments to All American will also roughly equal to All American's aggregate debt or mortgage payments. All American has agreed to

### **Background of the Acquisition**

The terms of the asset purchase agreement are the result of arm's-length negotiations between representatives of All American and us. The following is a brief discussion of the background of these negotiations, the acquisition and related transactions.

Initially, All American was introduced to us because of Able's need for a new fuel supplier. Both All American and Able had a business relationship with TransMontaigne, a fuel supplier. TransMontaigne provided All American with the ability to earn additional revenue based upon its supply chain agreement with TransMontaigne. In the course of these initial discussions, All American learned that Tim Harrington, our former CEO, was interested in selling his stock holdings in our company. These discussions began in February 2004, and the sale of Mr. Harrington's stock to All American occurred in December 2004. TransMontaigne, through extension of fuel credit, enabled All American to close the transaction with Mr. Harrington. Following the sale of Mr. Harrington's stock, All American Plazas became the owner of approximately 50% of the Company's issued and outstanding stock. In February 2005, the Company first began discussions relating to an integration of the operating businesses of the Company and All American Plazas. These discussions came at a time when the Company was already in the process of considering alternative merger or joint venture partners. Mr. Harrington's stock sale to All American brought to the Board's attention that All American Plazas could be a potential candidate for such a merger or joint venture transaction. Mr. Harrington's stock sale was not a precursor to the transaction currently being sought for shareholder approval. Mr. Harrington is not receiving any consideration as a result of the proposed asset acquisition of All American Plazas.

At the same time, All American was also seeking financing from other sources. After certain financings failed to consummate by February 2005, we revisited the possibility of acquiring All American in the belief that this would enable the combined entity to have easier access to capital in the public market. Our board of directors then began a period of intense negotiation and discussion relating to the acquisition, and on February 28, 2005, voted to approve the acquisition, pending further discussions and satisfactory due diligence on All American.



Following this February 28 meeting of the Board, the Board convened a total of five more times (May 17, 2005; May 25, 2005; June 12, 2005; June 13, 2005 (two meetings); June 14, 2005). A summary of those persons present and the general topics discussed at these meetings is presented below:

- On May 17, 2005 a teleconference meeting was held between Stephen Chalk, Gregory Frost, Patrick O'Neill, Alan Richards and Christopher P. Westad. During the meeting the attendees had discussions about the 2002, 2003 and 2004 All American Plazas, Inc.'s financials including any forthcoming opinions from the Company's auditors and outside consultants retained for the purpose of evaluating the acquisition.
- On May 25, 2005 there was a meeting attended by Stephen Chalk, Solange Charas, Gregory Frost, Edward C. Miller, Jr., Patrick O'Neill, Alan Richards, Christopher P. Westad, Joseph Simontacchi and David Miller (the latter two of which were from Simontacchi and Company, our outside auditors). During the meeting the Board retained the services of Ehrenkrantz, King, Nussbaum, Inc. ("EKN"), an outside consulting company, to evaluate and, if applicable, render a fairness opinion for the acquisition of the shares of All American Plazas.
- On June 12, 2005 a teleconference meeting was held between Stephen Chalk, Solange Charas, Gregory Frost, Patrick O'Neill, Alan Richards and Christopher P. Westad. During the meeting the attendees further discussed the fairness opinion prepared by EKN and the methodology used to ascertain a valuation of the assets of All American.
- On June 13 two teleconference meetings took place. The first was between Stephen Chalk, Solange Charas, Gregory Frost, Patrick O'Neill, Alan Richards and Christopher P. Westad. During this meeting there were further discussions regarding the fairness opinion and All American's valuation. The Board reconvened again for a second meeting to invite members of All American for a question and answer session. The second meeting was attended by the attendees of the first meeting and also included Frank Nocito, Jonathan Austern and Richard Mitstifer of All American. During this meeting representatives of All American advised the Board as to their real estate holdings, proposed uses and expectations from the financing matters. After the representatives left the meeting, the Board continued their discussions regarding the EKN fairness opinion.
- On June 14, 2005, a teleconference meeting was held between Stephen Chalk, Solange Charas, Gregory Frost, Edward C. Miller, Jr., Patrick O'Neill, Alan Richards and Christopher P. Westad. During this meeting discussions were had regarding the proposed acquisition of All American. and the share price. All attendees voted in favor of the acquisition with the exception of Gregory Frost who abstained.

The Company and All American were separately represented by counsel in all proceedings relating to the proposed transaction. An independent firm was retained to evaluate the transaction for its overall fairness to the shareholders of the Company. Interested directors abstained from the final vote of the Board to approve or disapprove this transaction.

The intention of the Board to enter into an acquisition of All American by Able was announced in an 8-K filing dated March 4, 2005. Our Board elected to use a stock price for said acquisition by looking back for the prior 20 trading days from the February 28, 2005 meeting date to arrive at an average share price of \$3.00 per share. Following the announcement of the intention to enter into the acquisition, Able's stock price substantially increased in value.

Effective June 16, 2005, All American and we entered into a stock purchase agreement and related agreements and, on June 17, 2005, publicly announced such agreement through a joint press release. Such stock purchase agreement was thereafter amended and restated to be an asset purchase agreement, whereby we purchased substantially all of the operating assets of All American.

#### **Necessity for Stockholder Approval**

Our common stock is traded on the NASDAQ Capital Stock Market under the symbol “ABLE”. Consequently, we are subject to the Marketplace Rules promulgated by the National Association of Securities Dealers, Inc. (“NASD”). The issuance of these shares requires stockholder approval under the NASD Marketplace Rules, such as Rule 4350.

-23-

---

Under Rule 4350(i)(1)(B) and 4350(i)(1)(D), respectively, stockholder approval must be sought when (a) the issuance or potential issuance will result in a change of control of the issuer (the “Change of Control Rule”) or (b) in connection with a transaction other than a public offering involving the sale, issuance or potential issuance by the issuer of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock (the “20% Rule”). Furthermore, under Rule 4350(i)(1)(C), stockholder approval must be sought in connection with an acquisition of the stock or assets of another company if any director, officer or substantial shareholder of the issuer has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company to be acquired or in the consideration to be paid in the transaction and the present or potential issuance of common stock could result in an increase in outstanding common shares or voting power of 5% or more (the “Affiliated Transaction Rule”).

In addition, since All American currently holds more than 15% of our issued and outstanding common stock, approval by at least two-thirds of the stockholders (other than All American) is necessary under Section 203 of the Delaware General Corporations Law (the “Delaware Business Combination Rule”). The voting thresholds for approval under the Delaware Business Combination in this case are greater than the Affiliated Transaction Rule, the discussion below relating to the Affiliated Transaction Rule are for information purposes only since approval of the acquisition under the Delaware Business Combination Rule will also satisfy the requirements under the Affiliated Transaction Rule.

#### *The Change of Control Rule*

The Change of Control Rule requires us to obtain stockholder approval prior to certain issuances with respect to common stock or securities convertible into common stock which will result in a change of control of the issuer. Generally, NASD interpretations provide that 20% ownership of the shares of an issuer by one person or group of affiliated persons is deemed to be control of such issuer. Pursuant to the asset purchase agreement (as more fully described under “Asset Purchase Agreement” on page 35 of this proxy statement), in consideration for all of the outstanding shares of All American, we will issue to All American 11,666,667 restricted shares of our restricted common stock, par value \$.001 per share, at the closing. This issuance will constitute approximately 78% of our issued and outstanding shares of common stock, and will cause All American to own approximately 85% of our issued and outstanding shares of common stock, on a post-issuance basis. All American owned approximately 32% of our issued and outstanding shares of common stock as of June 16, 2005, the date upon which the asset purchase agreement was executed.

#### *The 20% Rule*

The 20% Rule requires Nasdaq-listed issuers to obtain stockholder approval prior to any issuance or potential issuance of securities representing 20% or more of the outstanding common stock or voting power of the issuer (on an as-converted or as-exercised basis) before such issuance for a price less than the greater of the book or market value of the issuer's common stock. For purposes of this rule, the (i) outstanding common stock or voting power of the issuer is determined as of a date the issuer enters into a binding agreement with respect to such issuance or potential issuance, which in the case of the acquisition of All American is June 16, 2005; and (ii) market value of the issuer's common stock is deemed to be the closing bid price of the issuer's common stock immediately prior to entering into such binding agreement, which in the case of the acquisition of All American, is \$18.58 per share, the closing bid price of our common stock on June 15, 2005.

At the closing, we will deliver to All American 11,666,667 restricted shares of our common stock at \$3.00 per share for an aggregate purchase price of \$35,000,000 in exchange for all of All American issued and outstanding common stock. As of April 11, 2006, our common stock closed at a price of \$9.17 per share. Accordingly, the issuance to All American on the closing date and the potential subsequent issuance in connection with the refinancing will represent a below-market issuance of more than 20% of our outstanding common stock as of June 16, 2005.



*The Affiliated Transaction Rule*

The Affiliated Transaction Rule requires stockholder approval prior to the issuance of any securities in a transaction in which any director, officer or substantial stockholder of the issuer has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more. All American currently owns approximately 32% of our outstanding common stock and its shareholders receive 11,667,777 shares of our common stock in connection with the acquisition, representing an issuance of approximately 78% of our issued and outstanding common stock on a post-issuance basis.

*The Delaware Business Combination Rule*

The Delaware Business Combination Rule states that the supermajority consent (two-thirds of the voting shares) is required to approve of any "business combination" involving a "interested stockholder". Such two-thirds voting consent does not include and voting shares held by the interested stockholder. An "interested stockholder" is, subject to certain exceptions which do not apply to the acquisition, any stockholder (along with its affiliates) who hold or control 15% or more of the outstanding voting stock of the corporation. Through its purchase of Tim Harrington's 1,007,300 shares of Able's common stock in December 2004, All American became an interested stockholder for purposes of the Delaware Business Combination Rule. Once a party becomes an interested stockholder, a corporation is prohibited from engaging in any business combination with such interested stockholder for a period of three years unless the appropriate two-thirds majority vote is obtained from the stockholders approving such transaction. A "business combination" under the Delaware Business Combination Rule includes the transactions contemplated by the acquisition.

**Recent Financing of All American**

As previously disclosed in our Current Report on Form 8-K, dated June 7, 2005, and filed with the Securities and Exchange Commission on June 10, 2005, All American recently consummated a financing that, if the acquisition of All American is consummated, will impact us. The recently completed refinancing by All American allowed All American to pay off approximately \$3,000,000 in existing debt and provided All American with approximately \$2,000,000 in working capital.

The following description of the terms of All American's refinancing is qualified in its entirety by the terms and provisions contained in the financing documentation included in the Current Report on Form 8-K, dated June 7, 2005, and filed with the Securities and Exchange Commission on June 10, 2005, as Exhibits 99.1 through 99.7.

Pursuant to the terms of the Securities Purchase Agreement dated June 1, 2005 among All American and certain purchasers identified therein, the purchasers loaned All American an aggregate of \$5,000,000 (the "June Debentures"), evidenced by secured debentures also dated June 1, 2005. The debentures shall be repaid within two years from the date of issuance, subject to the occurrence of an event of default, with interest payable at the rate per annum equal to LIBOR for the applicable interest period, plus 4% payable on a quarterly basis on April 1st, July 1st, October 1st and January 1st, beginning on the first such date after the date of issuance of the debentures. The loan is secured by real estate property owned by All American in Pennsylvania and New Hampshire. In addition, in the event that we do not complete the acquisition of All American prior to the expiration of the 12-month anniversary of the securities purchase agreement, All American shall be considered in default of the loan. Pursuant to the Additional Investment Right among All American and the purchasers, the purchasers may loan All American up to an additional \$5,000,000 on the same terms and conditions as the initial \$5,000,000 loan, except for the conversion price of the debentures.

**The primary purchaser parties of the June Debentures are the same as or affiliated with those purchasers in the financing.**

If we consummate the acquisition of All American, upon such consummation, we will not in general assume the debt obligations of All American which include the obligations described by the above referenced Securities Purchase Agreement, the debentures and the Additional Investment Right Agreement. However, we will assume certain contracted obligations relating to the June Debentures through the execution of a Securities Assumption, Amendment and Issuance Agreement, Registration Rights Agreement, Common Stock

-25-

---



Purchase Warrant Agreement and Variable Rate Secured Convertible Debenture Agreement, each between the purchasers of the June Debentures and us. Such documents provide that All American and we shall cause the real estate collateral to continue to secure the loan, until the earlier of full repayment of the loan upon expiration of the debentures or conversion by the purchasers of the debentures into shares of our common stock at a conversion rate of the lesser of (i) the purchase price paid by us for each share of All American common stock in the acquisition, or (ii) \$3.00, the conversion price, subject to further adjustment. However, the conversion price with respect to the additional investment right shall be \$4.00. In addition, the purchasers shall have the right to receive five-year warrants to purchase 2,500,000 of our common stock at an exercise price of \$3.75 per share. We shall also have an optional redemption right (which right shall be mandatory upon the occurrence of an event of default) to repurchase all of the debentures for 125% of the face amount of the debentures plus all accrued and outstanding interest and expenses, as well as a right to repurchase all of the debentures in the event of the consummation of a new financing in which we sell securities at a purchase price that is below the conversion price. Of the contemplated 11,666,667 shares of our common stock (valued at \$3.00 per share) All American is to receive from the acquisition, All American has agreed to escrow up to 2.5 million shares of the common stock (but not less than 1.67 million shares) for the purpose of transfer to the holders of the June Debentures in the event such holders elect to convert the June Debentures. As a result, assuming approval of the acquisition of All American, conversion of the principal amount of the June Debentures will not result in any significant additional issuances of our common stock.

We do contemplate that the debt obligations of All American will be in general serviced through our payments of rents under leases which we plan to enter into with All American with respect to each of the All American owned properties which will allow us to occupy and operate the businesses we are purchasing from All American.

Pursuant to the Registration Rights Agreement among the All American and the purchasers of the June Debentures, if we consummate the acquisition of All American, the purchasers shall have demand registration rights with respect to all shares of our common stock obtained by them through the conversion of the June Debentures. The purchasers shall also have an additional investment right, for a period of nine months after the initial registration statement filed by us with the Securities and Exchange Commission, the SEC, is first declared effective by the SEC, to purchase units consisting of convertible debentures in the aggregate amount of up to \$14,000,000, the additional Debentures, and common stock purchase warrants equal to 50% of the face amount of such additional debentures, the additional warrants. The conversion price of the additional debentures shall be \$6.50 per share of common stock with respect to the first \$7,000,000 of additional debentures purchased, and 80% of the average weighted price of our common stock during the 20 trading days immediately prior to the purchasers' election to purchase the additional debentures, with respect to the remaining \$7,000,000. The additional warrants shall have a five-year term and an exercise price of 110% of the conversion price. In the event of the occurrence of a default with respect to the additional debentures, we shall have identical redemption rights to those described in the immediately preceding paragraph.

If our stockholders approve the acquisition proposal, they will be approving the issuance of the additional securities pursuant to the agreements among the purchasers and us described above as we will assume significantly all of All American's contractual obligations under such documents upon consummation of the acquisition, other than the obligation to repay the debt evidenced by the June Debentures. Our assumption of the debentures and warrants and the potential issuance of the additional debentures and additional warrants could result in an issuance that may violate the Change of Control Rule and the 20% Rule if stockholder was not being sought pursuant to the acquisition proposal.

### **Interests of Our Directors and Officers in the Acquisition**

In considering the recommendation of our board of directors that you vote in favor of adoption of the acquisition proposal, you should keep in mind that certain of our directors and officers have interests in the acquisition that are different from, or in addition to, your interest as a stockholder. One of our directors, Gregory Frost, holds an aggregate 15.15% beneficial stock interest in All American, and, as such, has abstained from any vote approving the acquisition. It is anticipated, that our current board of directors will remain on the board.



Our board of directors was aware of these arrangements during its deliberations on the merits of the acquisition and in determining to recommend to our stockholders that they vote for the approval of the acquisition proposal.

### **Our Reasons for the Acquisition and Financing and Recommendation of Our Board**

Our board of directors has concluded that the acquisition of All American and the financing are both in the best interests of our stockholders.

In approving the asset purchase agreement with All American, our board of directors relied on information (including financial information) relating to All American, the regulatory environment and the industry fundamentals. In addition, the board considered Ehrenkrantz King Nussbaum Inc.'s opinion that, based on conditions and considerations described in its opinion, the All American acquisition is fair to our current stockholders from a financial point of view.

In addition, our board of directors considered a wide variety of factors in connection with its evaluation of the acquisition and financing. In light of the complexity of those factors, the board did not consider it practicable to, nor did it attempt to, quantify or otherwise assign relative weights to the specific factors it considered in reaching its decision. Some of the positive and negative reasons factors, however, considered by the board are described below:

#### Positive Reasons -

- o Expansion of Able's business will help counteract some of the cyclical effects of the home heating oil business, where 65% of our revenues are generated during the late fall and winter months;
- o The increased purchasing power of the combined entities will enable efficiencies of scale and greater vendor discounts resulting in overall cost savings;
- o All American's real estate properties can be used as current or future distribution centers for our home heating oil business, thus permitting greater efficiencies for our existing distribution routes as well as setting the stage for future expansion into new markets;

#### Negative Reasons -

- o The current business of Able does not involve the operation or management of trucking plazas so significant administrative expenses may be incurred to integrate the operating businesses of the combined companies;
- o The current business of Able is cyclical in nature (cold weather months are historically the peak business months for the home heating oil business) whereas the truck plaza operation and management business is year-around, and therefore integration of the two businesses may require a period of administrative and managerial adjustment for a year-around operation;
- o The Company currently offers one primary product in a largely discrete geographic market whereas All American Plazas operates over a more widespread geographic region and offers various product lines;

### **All American's successful record of growth and expansion and high potential for future growth**

An important criteria to our board of directors was that the company have established business operations, that it was generating current revenues and that it had the strong potential to experience rapid additional growth. Our board of directors believes that All American, as a recognized brand name in the truck stop industry that has been developed

over a period of 17 years has in place a strong business infrastructure and provides a solid platform for our plans.

-27-

---

### **The experience of All American's management**

Another important criteria to our board of directors was that the company must have a seasoned management team with specialized knowledge of the markets within which it operates and the ability to adapt a company's business model in a rapidly changing environment. All American's management team has shown a strong ability to adjust its business plan to changing market factors and to develop additional business opportunities.

### **The terms of the Asset Purchase Agreement**

The terms of the asset purchase agreement, including the closing conditions and termination provisions, are customary and reasonable. In addition, our board of directors believes that, because members of our current management will own a large percentage of the combined company, the combined company will have a management team that will be committed to growing our company and increasing shareholder value. It was important to our board of directors that the asset purchase agreement include customary terms and conditions as it believed that such terms and conditions would allow for a more efficient closing process and lower transaction expenses.

Our board of directors believes that each of the above factors strongly supported its determination and recommendation to approve the acquisition. Our board of directors did, however, consider the following potentially negative factors, among others, in its deliberations concerning the acquisition including the recent financial history of All American.

Certain of our officers and directors may have different interests in the acquisition than our stockholders. Our board of directors considered the fact that certain of our officers and directors may have interests in the acquisition that are different from, or are in addition to, the interests of our stockholders generally, including the matters described under "Interests of Our Directors and Officers in the Acquisition" above.

After deliberation, our board of directors determined that these potentially negative factors were outweighed by the potential benefits of the acquisition above, including the opportunity for our stockholders to share in All American's future possible growth and anticipated profitability.

### **Fairness Opinion**

Ehrenkrantz King Nussbaum Inc. ("EKN") acted as financial advisor to us in connection with the All American acquisition. EKN delivered its original written opinion to our board of directors on June 15, 2005, which stated that, as of such date, and based upon and subject to the assumptions made, matters considered, and limitations on its review as set forth in the opinion, the consideration to be paid in the acquisition is fair, from a financial point of view, to our stockholders. At the time EKN delivered its original fairness opinion, the acquisition was structured as a stock purchase by us to all of the issued and outstanding shares of All American. Since the June 15, 2005, the acquisition has been amended to become an asset purchase transaction whereby we would purchase substantially all of the operating assets of All American. In this regard, EKN was then further engaged to render another, final written opinion to us regarding whether in its opinion the restructured transaction would be fair, from a financial point of view, to our stockholders and has orally informed us of its intention to issue an opinion that the restructured transaction as an asset purchase is fair to the stockholders, from a financial point of view. A copy of EKN's fairness opinion is attached hereto.

- You are urged to read the EKN opinion carefully and in its entirety for a description of the assumptions made, matters considered, procedures followed and limitations on the review undertaken by EKN in rendering its opinion.
- The EKN opinion is not intended to be and does not constitute a recommendation to you as to how you should vote with respect to the acquisition. EKN was not requested to opine as to, and its opinion does not address, our

underlying business decision to proceed with or effect the transaction.

In arriving at its opinion, EKN reviewed and took into account:

-28-

---

- the draft asset purchase agreement between All American and us;
- certain publicly available information concerning us which EKN deemed to be relevant to its inquiry and analysis including our Annual Reports on Form 10-KSB for the fiscal years ended June 30, 2003 and June 30, 2004, Quarterly Reports on Form 10-QSB for the periods ended March 31, 2005, December 31, 2004 and September 30, 2004, Definitive Proxy Statement on Schedule 14A dated May 3, 2005, Current Report on Form 8-K filed on March 4, 2005 and other Securities and Exchange Commission filings;
- financial and operating information with respect to the business, operations and prospects of All American Plazas, Inc.;
- discussions with our counsel and Vice President of Business Development, concerning our current operations, financial condition and future prospects;
- documentation in connection with a financing transaction among All American and certain investors, completed on June 7, 2005, including a Securities Purchase Agreement, Secured Debenture and Additional Investment Rights Agreement as well as proposed documents among such purchasers and us in the event we complete the acquisition of All American, including a Securities Assumption, Amendment and Issuance Agreement, Variable Rate Secured Convertible Debenture, Common Stock Purchase Warrant and Registration Rights Agreement.

In arriving at its opinion, EKN looked at various valuation methods including the following and applied those methods it deemed appropriate in its judgment:

- Comparable Company Analysis, which derived a range of implied values for All American by analyzing how the public marketplace values similar private companies.
  - Comparable Transaction Analysis, which derived a range of implied values for All American by analyzing how acquirers value companies or assets similar to All American.
- Contribution Analysis, which examined the relative value of each entity based on each entity's contribution to the combined company. This analysis is based on key financial metrics.
  - Liquidation Value, which analyzed the potential liquidation value of All American.
- Trading History, which consisted of a review of the prices of and trading history of our common stock prior to the filing of our Current Report on Form 8-K on March 4, 2005, in order to reflect the pre and post transaction indication.
- Such other financial and comparative analyses as EKN deemed appropriate or necessary for the purpose of rendering its opinion as expressed.

In rendering its opinion, EKN has assumed and relied upon the accuracy and completeness of the financial and other information provided to it or discussed with it by us or otherwise used by EKN in arriving at its opinion without independent verification and further relied upon the assurances of our management that they are not aware of any facts that would make our financial forecasts (including on a pro forma basis) inaccurate or misleading. Based upon the advice of our management, EKN has assumed that such forecasts have been reasonably prepared to reflect the best currently available estimates and judgments of the our management as to our future financial performance (including on a pro forma basis), and that we reasonably expect to perform in accordance with such forecasts. In arriving at its opinion, EKN did not conduct physical inspections of our properties and facilities and did not make or obtain any evaluations, independent or otherwise, or appraisals of our assets, including any proprietary technology, or current or future liabilities. Additionally, we did not authorize EKN to solicit, and it has not solicited any indications of interest

from any third party with respect to the purchase or business combination of all or part of its business on a post-transaction basis. EKN's opinion is necessarily based upon limited market, economic and other conditions as they existed on, and can be evaluated as of, the date of the opinion.

-29-

---



EKN has not acted as a financial advisor to us in connection with the initiation, solicitation of or negotiation of any terms of the asset purchase agreement, nor has it had any discussions with the management of All American Plazas, although, it has discussed with All American's financial statements with All American's outside auditors, Beard Miller Company, LLP.

EKN delivered its written opinion to our board of directors on June 15, 2005, which stated that, as of such date, based upon and subject to the assumptions made, matters considered, and limitations on its review as set forth in the opinion, the consideration to be paid in the acquisition is fair, from a financial point of view, to our stockholders. EKN is an investment banking firm that, as part of its investment banking business, regularly is engaged in the evaluation of businesses and their securities in connection with mergers, acquisitions, corporate restructurings, private placements, and for other purposes. Our board of directors determined to use the services of EKN because it is a recognized investment banking firm that has substantial experience in similar matters. EKN has received a fee in connection with the preparation and issuance of its opinion. EKN does not beneficially own any interest in All American or us and has not provided services to either party other than for rendering the fairness opinion to us. In connection with the issuance of the written opinion, EKN was paid an original fee of \$150,000 for the services rendered in connection with the original stock purchase transaction and an additional \$75,000 for its further analysis relating to the restructuring of the acquisition as an asset purchase agreement.

### **Alternative Transactions**

The Board considered several alternative transactions with respect to both the acquisition and the financing. The Board also considered the alternative of not approving the acquisition or the financing. The other third-party proposals and the option of not approving any transaction were not, in the Board's exercise of sound business judgment, as favorable to the Company or its stockholders as the acquisition for All American or the financing which was provided by the purchasers of Debentures under the SPA under the July 2005 financing documents.

### **Business Synergy**

With respect to the acquisition, our board of directors felt that All American and our company have compatible existing business models and that the combination of the two companies as contemplated by the Asset Purchase Agreement and related documents will result in certain management and operational efficiencies which would not have been otherwise achieved by each company acting alone including obtaining more favorable credit terms. In addition, the Board believes that diversification of our business in the manner contemplated by the acquisition will assist us in furthering our overall business strategy of achieving vertical integration and supply-chain management. For instance, All American truck stop locations can be used as distribution centers for our home heating oil vehicles. Diversification may also further enable our company to favorably adjust to various fluctuation in the economy, which may be caused by, among other things, the cost and supply of home heating oil.

### **Appraisal or Dissenters Rights**

No appraisal rights are available under the Delaware General Corporation Law for our stockholders of in connection with the acquisition proposal or the financing.

### **Material U.S. Federal Income Tax Consequences of the Acquisition**

The following discusses the material U.S. federal income tax consequences of the acquisition to All American and our stockholders. We do not anticipate any federal income tax effect to our security holders as a result of the financing. This discussion is based on the United States Internal Revenue Code of 1986, as amended, which we refer to as the Code.

Our security holders will continue to hold their securities and, as a result will not recognize any gain or loss from the acquisition.

-30-

---

There should be no federal income tax consequences to a holder of our common stock as a result of the acquisition.

The conclusions expressed above are based on current United States tax law. Future legislative, administrative or judicial changes or interpretations, which can apply retroactively, could affect the accuracy of those conclusions. No rulings have been or will be sought from the Internal Revenue Service concerning the tax consequences of the transactions contemplated by the asset purchase agreement.

The discussion does not address all of the tax consequences that may be relevant to particular taxpayers in light of their personal circumstances or to taxpayers subject to special treatment under the Code. Such taxpayers include non-U.S. persons, insurance companies, tax-exempt entities, dealers in securities, banks and persons who acquired their shares of capital stock pursuant to the exercise of employee options or otherwise as compensation.

**BECAUSE OF THE COMPLEXITY OF THE TAX LAWS, AND BECAUSE THE TAX CONSEQUENCES TO ANY PARTICULAR STOCKHOLDER MAY BE AFFECTED BY MATTERS NOT DISCUSSED ABOVE, EACH ABLE ENERGY, INC. STOCKHOLDER IS URGED TO CONSULT A TAX ADVISOR WITH RESPECT TO THE SPECIFIC TAX CONSEQUENCES OF THE TRANSACTIONS CONTEMPLATED BY THE ASSET PURCHASE AGREEMENT TO HIM, HER OR IT, INCLUDING THE APPLICABILITY AND EFFECT OF STATE, LOCAL AND NON-U.S. TAX LAWS, AS WELL AS FEDERAL TAX LAWS.**

### **Regulatory Matters**

The acquisition and financing and the transactions contemplated by the asset purchase agreement are not subject to the HSR Act or any other material federal or state regulatory requirement or approval, other than that described in this proxy statement relating to NASD Marketplace Rules and Delaware law.

### **Consequences if Acquisition Proposal, Financing or Charter Amendment is Not Approved**

If the acquisition proposal is not approved by the stockholders, then we will not be able to consummate the acquisition upon the terms currently contemplated by the asset purchase agreement. We may attempt to renegotiate the terms of the acquisition and seek stockholder approval at a later date.

If the financing is not ratified by the stockholders, then we may need to amend the terms of the financing or we may be required to rescind the purchase, which will require that we return to all purchasers of Debentures all proceeds, with interest, which we received in connection with the financing, and possibly together with any costs and expenses incurred by the purchasers as a result of such rescission.

If the charter amendment is not approved by the stockholders, then we will not be able to consummate the transactions contemplated by the acquisition. In addition, we may not be able to engage in discussions relating to any future transactions involving our common stock until our charter is amended to increase the number of authorized shares of common stock.

### **Required Vote**

To be approved by the stockholders, the proposal to approve, for purposes of NASD Marketplace Rule 4350(i), the issuance of securities to All American pursuant to the asset purchase agreement or financing that could violate the Change of Control Rule, 20% Rule and the Affiliated Transaction Rule, which will result in the acquisition of All American, must receive the affirmative votes of a majority of the votes cast, in person or by proxy, at the special meeting.

To be approved by the stockholders, the proposal to approve, for purposes of Section 203 of the Delaware General Corporations Law, the acquisition of the assets from All American pursuant to the asset purchase agreement must receive the affirmative vote of a two-thirds majority of the votes cast, in person or by proxy, at the special meeting. The votes currently held by All American in our company will NOT be included for purposes calculating the votes required by this Section 203 vote.

-31-

---

To be approved by the stockholders, the proposal to approve the charter amendment must receive the affirmative vote of a majority of the votes cast, in person or by proxy, at the special meeting.

Abstentions are treated as shares present or represented and entitled to vote at the special meeting and will have the same effect as a vote against this proposal. Broker non-votes are not deemed to be present and represented and are not entitled to vote, and therefore will have no effect on the outcome of this proposal.

**Recommendation**

The Board of Directors believes that it is in the company's best interests that the stockholders authorize the issuance of common stock to All American pursuant to both the asset purchase agreement and the financing which, absent such authorization, would constitute an issuance in violation of the Change of Control Rule, 20% Rule the Affiliated Transaction Rule and/or the Delaware Business Combination Rule. The Board further believes that it is in the best interests of the company to approve the charter amendment.

**THE BOARD OF DIRECTORS RECOMMENDS THAT THE STOCKHOLDERS VOTE "FOR" THE ACQUISITION PROPOSAL TO PURCHASE SUBSTANTIALLY ALL OF THE OPERATING BUSINESS ASSETS ALL AMERICAN AND TO RATIFY THE FINANCING AGREEMENTS ENTERED INTO BY US IN JULY 2005 WITH RESPECT TO THE SALE OF THE DEBENTURES. THE BOARD OF DIRECTORS ALSO RECOMMENDS THAT THE STOCKHOLDERS VOTE "FOR" THE ADOPTION OF THE CHARTER AMENDMENT TO INCREASE THE NUMBER OF COMMON STOCK AUTHORIZED BY OUR CERTIFICATE OF INCORPORATION TO 75 MILLION SHARES.**

## **THE ASSET PURCHASE AGREEMENT**

The following summary of the material provisions of the asset purchase agreement is qualified by reference to the complete text of the asset purchase agreement, a copy of which is attached as Annex A to this proxy statement. All stockholders are encouraged to read the asset purchase agreement in its entirety for a more complete description of the terms and conditions of the acquisition.

### **Structure of the Acquisition**

At the effective time of the acquisition, All American will continue as an operating company and become our wholly-owned subsidiary.

### **Purchase Price-Payments**

At the closing, we will deliver to All American 11,666,667 restricted shares of our restricted common stock, par value \$.001 per share, at \$3.00 per share for an aggregate purchase price of \$35,000,000 for substantially all of the assets relating to the operating business of All American. 1,666,667 of such shares will be escrowed and be kept by us. In the event that any of the June Debentures are exercised (those debentures which were purchased by various investors in All American in June 2005), then we will have the right to direct and effect the cancellation of a like number of these escrowed shares, up to 2.5 million shares of our common stock (but not less than 1.67 million shares). As of April 11, 2006, the closing price of our common stock was \$9.17 per share.

We will not be assuming the debt obligations of All American nor will we be taking title to any of the real property which All American owns.

### **Leases**

For tax-related and refinancing purposes, we will not assume title to the real property owned by All American relating to its truck stop (and related) business. We will be conveyed an exclusive option to purchase all equity interests associated with such real property as part of the purchase price consideration. In order to allow us to operate on the various premises which are owned by All American, we will enter into lease agreements. Payments of rent to All American by us under these lease agreements are intended to be used by All American to service its monthly outstanding debt obligations. Our option to purchase the equity interests in All American real properties will be deemed to be increased on a dollar for dollar basis for each dollar which All American applies the principal amount of its outstanding debt obligations. In the event that All American's monthly debt service obligations materially increase or decrease, the rents we are obligated to pay under our leases with All American will also increase or decrease by the same amounts. As part of our option, we will be granted the right to pay off the debt (including certain other expenses) on any or all of the All American owned properties provided that we receive title to any properties that are encumbered by such debt.

### **Closing of the Acquisition**

Subject to the provisions of the asset purchase agreement, the closing of the acquisition will take place on the first day following the date that our stockholders approve the acquisition, or at such other time as the parties may agree.

### **Representations and Warranties**

The asset purchase agreement contains a number of representations and warranties that All American and we have made to each other. These representations and warranties relate to:

- organization, power and authority;
- financial statements (All American only);

- no material adverse change;
- absence of certain changes or events since March 31, 2005 (All American only);
  - taxes;
- employees and employee benefit plans (All American only);
  - litigation;
- compliance with applicable laws;
- material contracts (All American only);
  - brokerage;
- no undisclosed liabilities;
- related party transactions (All American only);
  - permits (All American only);
  - insurance (All American only);
- intellectual property (All American only);
- environmental matters (All American only);
- bank accounts and books and records (All American only);
- no knowledge of breach, limitation of representations and warranties;
  - ownership and condition of assets; and
  - investment representations and warranties.

### **Materiality and Material Adverse Effect**

Many of the representations and warranties are qualified by materiality or material adverse effect. For the purposes of the asset purchase agreement, a material adverse effect on All American means a material adverse effect on the business, operations, properties, assets or financial condition of All American (and its subsidiaries), taken as a whole.

### **Interim Covenants Relating to All American**

Under the asset purchase agreement, All American, prior to completion of the acquisition, has agreed to conduct its business in the ordinary course consistent with past practice, except as expressly permitted by the asset purchase agreement. In addition to this agreement regarding the conduct of business generally, subject to specified exceptions, All American has agreed that All American:



will maintain the fixed assets essential to All American's operations in good operating repair and condition, subject to normal wear and tear, and make repairs and replacements in accordance with prior practices;

-34-

---

- will report to us concerning operational matters of a material nature and otherwise report periodically to us concerning any material changes to status of the business, operations, and finances of All American;
- will continue to pay and satisfy its liabilities in the ordinary course of business, paying such liabilities in accordance with prior practices ;
- will continue to maintain in full force and effect or renew or replace all policies of insurance now in effect which cover the assets of All American and give all notices and present all material claims under all policies of insurance in due and timely fashion;
- will not enter into any material leases or contracts for the purchase or sale of products, utilities, or services, except (A) those made in the ordinary course of business or (B) those which may be canceled without liability upon not more than thirty (30) days' notice; or (C) with our approval;
- will use best efforts to preserve the business organization and properties to be transferred hereunder intact, including present operations and relationships with lessors, licensors, customers and employees; use reasonable efforts to preserve for the goodwill of our employees, suppliers, customers, and other persons with whom it has business relations;
- will not enter into any contract, agreement, or understanding with any labor union or other association representing any employee; not enter into, amend, or terminate, fully or partially, any benefit plan; and not withdraw any funds from any benefit plan or trust or other funding arrangement maintained pursuant thereto;
- will not, except for annual merit increases awarded to non-officer employees in the ordinary course of business consistent with past business practices, authorize or grant any wage or salary increase, otherwise directly or indirectly increase post closing compensation to or for any employee, or agree in any manner to any such post closing increase;
- will not create or incur any indebtedness for borrowed money or assume directly or indirectly any debt, obligation, or liability (whether absolute or contingent, whether directly or as surety or guarantor, and whether or not currently due or payable) which will exist after the closing date, except in the ordinary course of business consistent with past business practices and policies and as required for the operation of All American;
- will not make any material change in its accounting methods, practices, policies, principles, or procedures, except as necessary to perform the asset purchase agreement, without consulting with us;
- will not enter into any lease, sublease, or contract, regarding the acquisition, leasing, or occupancy of any real estate, equipment, vehicles, or other items relating to All American except in the ordinary course of business or upon our approval;
- will not sell, convey, lease, abandon, or otherwise dispose of, or grant, suffer, or permit any lien or encumbrance upon, any of its material assets, except on arm's length terms or in the ordinary course of business;
- will not enter into or modify in any manner any material contract to which it is a party except in the ordinary course of business; and
  - will accrue and/or pay all withholding and other taxes on a timely basis.

**No Solicitation by All American**

Pursuant to the terms of the asset purchase agreement, All American has agreed that it will not directly or indirectly solicit, entertain or encourage inquiries or proposals, or enter into an agreement or negotiate with any other party, to sell, or enter into any merger or consolidation with respect to, the business of All American, All American, a substantial portion of All American's assets or the shares of capital stock of All American.

-35-

---

### **All American Shareholder Consent**

The acquisition is subject also to the consent by a majority of the holders of voting capital stock of All American. All American will, as a further condition to the closing of the acquisition, obtain this required consent prior to the closing.

### **Access to Information**

To aid in the orderly transition of the business of All American, during the period prior to the closing, All American and its representatives will give us and our representatives, reasonable access to the personnel, properties, contracts, books and records and other documents and data concerning All American as we may reasonably request.

### **Indemnification**

If the closing occurs, All American has agreed to indemnify and hold harmless us and our respective consolidated corporate parents and subsidiaries, for any damages, whether as a result of any third party claim or otherwise, and which arise from or in connection with the breach of representations and warranties and agreements and covenants of All American or for any brokerage or finder's fees or commissions or similar payments in connection with the acquisition. We shall indemnify and hold harmless All American from and against any damages which arise from or in connection with the breach of representations and warranties and agreements and covenants of ours. Claims may be asserted once total damages exceed 1% of the sum of the purchase price. Additionally the aggregate liability for losses under the asset purchase agreement shall not exceed 50% of the purchase price. The liability of All American may be further reduced to the extent any loss is covered by insurance or to the extent the loss provides All American or us with any reduction in taxes, operating costs or other economic benefit. The representations and warranties will survive the closing for a period of two years following closing, provided that certain of the representations and warranties will survive for a longer period.

### **Fees and Expenses**

Except as provided in the asset purchase agreement, All American, on the one hand, and we, on the other, shall be responsible for their own fees and expenses (including the fees and expenses of its own lawyers, accountants and other advisers) in connection with the asset purchase agreement and the transactions contemplated thereby, provided that the All American's expenses shall include only those expenses incurred by them after March 30, 2005.

### **Public Announcements**

All American and we have agreed that any public announcement or similar publicity with respect to the asset purchase agreement will be issued at such time and in such manner as we determine based upon our requirements as a publicly traded company.

### **Conditions to the Completion of the Acquisition**

Our obligations consummate the acquisition are subject to the following conditions:

- receipt of stockholder approval from each of our respective stockholders;
- the accuracy of the representations and warranties made by All American in the asset purchase agreement as of the closing date and the absence of material adverse changes to the assets, liabilities, business, finances or operations of All American prior to the closing;



- the performance of and compliance with all of the covenants made, and obligations to be performed, by All American pursuant to the asset purchase agreement at or prior to the closing, including the delivery of certain required documents;
- the requisite third-party consents shall have been obtained; and
- the absence of claims by third parties regarding the ownership of All American shares or the entitlement to a portion of the purchase price.

The obligation of All American to consummate the acquisition is subject to the following conditions:

- the accuracy of the representations and warranties made by us in the asset purchase agreement as of the closing date and the absence of material adverse changes to our assets, liabilities, business, finances or operations taken as a whole prior to the closing;
- the performance of and compliance with all of the covenants made, and obligations to be performed, by us pursuant to the asset purchase agreement at or prior to the closing, including the delivery of certain required documents;
- the absence of any injunction or other order that prohibits the sale of the assets of All American in the manner contemplated by the asset purchase agreement.

### **Termination**

The asset purchase agreement may be terminated at any time, but not later than the closing, as follows:

- By mutual written consent of All American and us;
- By either party if a material breach of any representation, warranty or obligation contained in the asset purchase agreement by the other exists that may not be cured within 30 days written notice of such breach; or
- By either party if any conditions contained in the asset purchase agreement have not been fulfilled by the other party.

### **Effect of Termination**

In the event of termination by either All American or us, the asset purchase agreement will become void and have no effect, without any liability or obligation on the part of All American or us.

### **Assignment**

The rights and obligations of a party under the asset purchase agreement may not be assigned without the prior consent of the other parties, except that we may assign any of our rights under the asset purchase agreement to a subsidiary.

### **Amendment**

Any purported amendment to the asset purchase agreement shall be null and void unless it is in writing and signed by the party to be charged with the amendment.



## **Further Assurances**

All American and we have agreed that it will execute and deliver on or after the date of the asset purchase agreement, all such other documents and will take all reasonable actions as may be necessary to carry out the intent of the asset purchase agreement.

### **THE SECURITIES PURCHASE AGREEMENT (AND RELATED DOCUMENTS) RELATING TO THE FINANCING**

The documents relating to the financing are attached as exhibits to the Current Reports on Form 8-K, filed July 15, 2005 and November 18, 2005 with the SEC. We recommend that you review these documents. A summary of the financing is included also in this proxy under the section heading "Summary" of this proxy statement.

### **INFORMATION ABOUT ALL AMERICAN**

#### **Introduction**

All American, which is headquartered in Myerstown, Pennsylvania, is in the business of owning, operating and developing truck stops. Its operations include, but are not limited to, the ancillary merchandising of rights, products, and other goods and services. All American operates 11 (10 of which are directly owned, with the other plaza owned by an affiliate that will also sell its assets pursuant to the Asset Purchase Agreement) multi-service truck stops in the United States that sell diesel fuel and related services to approximately 5,000 trucking accounts and other independent consumers. Its operations are located at primary interchanges servicing major truck routes in the northeast region of the United States, and its facilities, known as "All American Plazas," offer a broad range of products, services, and amenities, including diesel fuel, gasoline, home-style restaurants, truck preventive maintenance centers, and retail merchandise stores that market primarily to professional truck drivers and other highway motorists.

During the fiscal year ended September 30, 2005, All American generated revenues of \$149,625,495 and had a net worth \$2,050,115. In addition, recent appraisals show the fair market value of the real estate owned by All American to be substantially higher than the recorded book value required by generally accepted accounting principles (GAAP) in the United States. When the excess of appraised value real estate over book value is added to the balance sheet, All American's net worth at the end of fiscal 2004 was approximately \$63.9million.

#### **The Travel Plaza and Truck Stop Industry**

##### ***Industry Overview***

Today's travel plazas and truck stops represent a major departure from their predecessors of a generation ago. These clean and modern multi-million dollar businesses offer a tremendous array of facilities and services to professional drivers and the traveling public. According to statistics obtained by the National Trade Association, there are approximately 4,500 travel plazas, pumping three-fourths of all diesel fuel sold at retail in the United States. The industry's primary customers consist of commercial trucking fleets and professional truck drivers that comprise the long-haul sector of the trucking industry.

In 2003, the U.S. Department of Transportation reported that 77 million trucks hauled 13.2 billion tons of freight, delivering 78% of the dollar value of products sold in the United States over highways. The Federal Highway Administration (FHA) predicts an increase of 31% in truck freight by 2015.

Diesel and gas sales is the largest determining factor for revenues and profitability for travel plazas and truck stops. Approximately 75% of All American's revenues during [2004] [update] derived from the sale of diesel and gas. For



instance, All American sold 60 million gallons of diesel fuel in Pennsylvania during 2003.

-38-

---

### **All American Plazas, Inc.**

All American Plazas, Inc. traces its roots to 1980 when the Company's founder, Glen Mitstifer, acquired his first truckstop in Carlisle, PA. The Company at that time was incorporated as All American Auto/Truck Plazas, Inc. A silent partner in the business sold his interest in the early 1980's to Carlos Leffler, who owned other companies involved in the wholesale and retail distribution of motor fuels and propane. By 1987, under the guidance of Mr. Mitstifer and Mr. Leffler, the company prospered and grew to a total of seven travel plazas in central PA.

In the mid 1980's Mr. Leffler had acquired a majority interest in another group of truckstops in central PA, incorporated as Truck Terminal Motels of America, Inc. ("TTMA"). In November 1988, the four TTMA truckstops and the seven All American Auto/Truck Plaza locations were merged, and All American Plazas, Inc. was formed.

All American continued to prosper in the early 1990's, adding a twelfth location in Doswell, VA, and completely re-building several locations, such as Milton, Clarks Ferry and the three Gables sites. Mr Mitstifer was also very active in the formation of AMBEST in 1989, an alliance of independently owned travel plazas formed to offer a nationwide network that would allow the independent operator to effectively compete with national chains. Eight of the All American locations were affiliated with AMBEST.

In 1994 Mr. Leffler passed away, which led to the acquisition of his shares by Mr. Mitstifer in June 1995. As a result of this transaction, Mr. Mitstifer held roughly 88% of the Company's voting shares. By late 1995, Mr. Mitstifer had been joined in the business by his two sons, Richard and Mark, who oversaw the financial and operational aspects of the Company, respectively. Richard had sixteen years of experience in commercial banking, and Mark had been with the Company since its inception in 1980.

The competitive environment in the the Pennsylvanian truckstop business changed dramatically in early 1995 when Utah-based chain Flying-J entered the state, choosing to build in Carlisle, Pennsylvania. During the same time period, other national competitors, such as Pilot and Petro Stopping Centers, had built or were planning new sites across the state. In early 1997, two of the larger chains in the industry, Union 76 and Travel Centers of America were merged, both being controlled by the same investment group. This merger impacted All American's Breezewood location, which had been a Union 76 franchise. The loss of a national affiliation at Breezewood opened the door for discussions with Petro and the next major change in Company history.

In December 1997, a written understanding was entered into with Petro, whereby three locations (Breezewood, Milton and Frystown) were to become Petro franchise sites, and a fourth (Carlisle) was to be franchised or sold to Petro. In February, 1998 the Breezewood and Milton sites were converted to Petro's. The Frystown site was going to require significant renovations to meet Petro standards and Carlisle needed to be a ground-up rebuild, so both were put on hold for future consideration. Currently, All American pays Petro approximately \$600,000 per year as part of its existing franchise arrangements with Petro. The franchise agreements cover the Breezewood and Milton sites. All American is required to maintain and offer facilities at these two facilities which other Petro locations similarly offer. The franchise agreements allow All American to market the two facilities under the "Petro" brand name, which All American feels currently have significant brand recognition. The franchise agreements are for three year terms and are automatically renewable.

Other company locations were also undergoing changes as a result of the competitive environment, a downturn in the trucking industry and managements decision to franchise with Petro. The SOCO All American in Carlisle had been closed in 1997 and the site put on the market. Part of the agreement with Petro restricted the future use of the site, so that no truckstop competitor would open on the site. Management also decided to sell it's Pine Grove, PA location to an independent operator, because it would reduce debt and the location could not be converted to a Petro. By the end of 1998, All American was operating ten truckstops and a motel.

In 2000, recognizing the amount of capital necessary to convert Carlisle and Frystown to Petro, the decision was made to sell the Carlisle site to Petro. The sale was completed in October 2000, which included the truckstop property and an adjacent motel site. AAP continued to operate the Carlisle All American until June 2001, while Petro built their new truckstop on the frontage that was occupied by the motel. By the end of 2001, a portion of the sale proceeds were used for upgrades at the Breezewood and Milton sites, while a new truck repair shop was constructed in Frystown as part of that Petro conversion. The ultimate conversion of the Frystown site was delayed due to a lack of available funds, as proceeds of the sale were used to pay off mortgage debt on the Doswell, VA location. This location had been under agreement of sale but the agreement was not finalized.

-39-

---

In early 2002, Mr. Mitstifer, decided to begin the process to sell All American and position himself for retirement. Initial discussions were held with Petro, who had a contractual right of first refusal, due to existing franchise agreements. A favorable deal could not be negotiated with Petro, and Petro allowed talks to begin with other interested purchasers. One of the interested parties was a Connecticut based operation that was led by Frank Nocito, who was ultimately the successful bidder. As part of his group of business interests, Mr. Nocito already operated two independent truckstops, one in NY and the other in NJ. In October, 2003 a stock sale was completed to a newly formed entity, All American Industries Corp. The sale price was \$27.5MM; approximately \$16.5 assumption of debt and the balance of \$11.2MM was structured with \$4MM due at closing, \$3MM due at the first year anniversary of the sale and the balance paid to former shareholders over the next seven years. Mr. Mitstifer, the founder, retired and the company's day to day operation is led by his son, Richard Mitstifer, President, Roger Roberts, Vice President of Operations, Louis Aponte, Vice President and Dan Johnston, Comptroller.

All American operates eleven locations. Eight are part of the original group of All American locations, two locations (Carney's Point and Strattanville) which were previously managed have been recently acquired and the other location (Belmont) is operated under a management agreement and will be sold by an affiliate pursuant to the Asset Purchase Agreement for the purchase price. , In January 2004, the Company closed a leased site in Carlisle, PA. The lack of profitability at the site did not make renewal fiscally feasible.

During the first year of operation All American implemented various cost saving programs that has returned the Company to profitability. Changes have been implemented in restructuring personnel and operations which has already reduced annual operation costs by more than \$1MM and additional improvements will continue. In addition, approximately \$500,000 has been saved on an annual basis after having negotiated a new fuel contract with better credit terms and lower prices. Other cost savings have been implemented by reducing the work force by 15% which also resulted in an annual savings of \$200,000 in workmen's compensation insurance. In addition, the Company signed-on with a new health insurance provider and implemented a 50/50 employee premium contribution plan which has saved an additional \$100,000 to the Company on an annual basis.

### **Competitive Advantage**

Increased competition and consolidation among trucking companies in recent years has heightened truck fleet owners' focus on reducing their operating costs. This trend has placed additional pressure on diesel fuel margins for all industry participants. In addition, from time to time, All American may face intense price competition in certain geographic markets. Industry studies indicate that approximately 61% of stops made by professional truck drivers are for reasons other than the purchase of fuel. Professional truck drivers rate meals, parking, and cleanliness as key factors in determining which truck stop they use. As a result, All American believes that its average site size, user-friendly facility design, and broad offering of non-fuel products, services, and amenities will continue to attract the professional truck driver and should continue to sustain All American's competitive advantage in spite of fuel pricing competition.

Regulators concerned with the number of fatigue related accidents have limited the number of hours a professional truck driver is permitted to drive. New hours of service regulations, in effect since January 4, 2004, increased the mandatory rest periods professional truck drivers are required to take. All American believes these new regulations will increase the time that professional truck drivers spend in multi-service travel centers, thereby increasing demand for higher margin merchandise and services. This factor, together with a high driver turnover rate, may also result in trucking fleets being more inclined to promote and encourage their drivers to use full-service truck stop chains, such as an All American Plaza, as a method of improving their driver retention.

### **Business Strategy**

The mission of All American is to steadily become one of the premier truck stop operators in the United States and to achieve ongoing sales revenues from the acquisition and operation of truck stops throughout the United States.

-40-

---

All American believes that there are currently more than 150 truck stops available for acquisition at commercially reasonable terms in the United States. The need for such facilities will continue long into the future and the development of ancillary properties associated with such facilities acquired will maximize revenue. All American intends to target those companies available for acquisition that have a recognized presence, and will work to convert other independent locations into All American-owned facilities.

To improve and maintain sales, All American is currently upgrading signage and gas islands with a completion date of December 2005. All American has also partnered with TransMontaigne Product Services in diesel branding with a desired result of having a nationwide network of the All American brand. We are investigating the feasibility of offering Bio-diesel fuel at our locations via another collaboration with TransMontaigne. We believe this will put us at a competitive advantage since many of our competitors do not and, to our knowledge, do not currently have plans to implement such a program. We believe, however, that the recent natural disasters in the U.S. Gulf Coast has demonstrated that the cost of alternative products will be in demand.

To increase diesel sales, All American has contracted with Truckstops Direct, a well-known marketing group, to market our locations to fleets that do not presently use our locations. With the assistance from Truckstops Direct, All American has been successful in bringing new accounts into the locations.

All American operates two Petro locations in Milton and Breezewood, PA. A third location, Frystown, PA, is scheduled for conversion to Petro in 2006. When completed, we believe this will enhance our offering at these locations and strengthen our presence.

## **Business Operations and Strategic Alliances**

### ***TMG & Its Fuel Management Platform***

All American has entered into a fuel supply agreement with TransMontaigne Product Services, Inc. (“TMG”), which provides All American with direct access to TMG’s “Best Practice Fuel Management Platform”. The TMG platform allows All American to act as its own wholesale fuel distributor to TMG truck stops without any capital investment whatsoever. TMG generates over \$9 billion in annual revenues and owns 55 oil and gas refineries throughout the U.S. with a total capacity of 21 million barrels of oil equivalents. In 2004, All American consolidated its fuel supply agreements with TMG and purchased \$100 million in fuel from TMG. Based on its agreement with TMG, All American’s fuel supply has been market sensitive with minimum markup. The relationship with TMG has allowed All American to pass along a portion of these cost reductions to its customers, providing it with a distinct competitive advantage in the truck stop marketplace. In addition, TMG provides All American with better credit terms than other retail fuel suppliers. Typically, in the truck stop industry, competitors have 10 or less days to pay for inventory while All American has a 15-day grace period, resulting in improved cash flow and earnings.

### ***TMG***

TransMontaigne, Inc., the parent company of TMG, is a refined petroleum products distribution and supply company based in Denver, Colorado, with operations primarily in the Gulf Coast, Midwest and East Coast regions of the United States. TransMontaigne predominantly distributes refined petroleum products, such as gasoline, diesel fuel, heating oil, jet fuel and kerosene, and some fertilizer, chemicals and other commercial liquids. TMG provides integrated terminal, transportation, storage, supply, distribution and marketing services to refiners, wholesalers, distributors, marketers and industrial and commercial end users of refined petroleum products. Its principal activities consist of terminal, pipeline and tug and barge operations and supply, distribution, marketing and supply management services.

TMG has assembled an asset infrastructure and developed a shipping history on common carrier pipelines, which are focused on the distribution of refined petroleum products from the Gulf Coast to the Midwest and East Coast. TMG

owns and operates terminal infrastructures that handle refined petroleum products and other commercial liquids with transportation connections by pipelines, tankers, barges, rail cars and trucks to its facilities or to third-party facilities. At its terminals, TMG provides throughput, storage, injection and distribution related services to distributors, marketers, retail gasoline station operators and industrial and commercial end users of refined petroleum products and other commercial liquids. During the fiscal year ended June 30, 2004, TMG owned and operated 55 terminals with an aggregate capacity of approximately 21.4 million barrels of refined petroleum products.

-41-

---

TMG has purchased refined petroleum products primarily from refineries along the Gulf Coasts of Texas and Louisiana, and has such products delivered to its own and third party terminals. TMG sells its products primarily through rack-spot sales, contract sales and bulk sales to cruise ship operators, commercial and industrial end users, independent retailers, distributors, marketers, government entities and other wholesalers of refined petroleum products and also provides supply chain management services to industrial, commercial and governmental customers that have large ground vehicle fleets. TMG's customer base includes companies involved in the manufacture and distribution of consumer products, express shipping services, waste disposal services, transportation services and state and local government entities.

### ***Best Practice Fuel Management Platform***

TMG has developed a proprietary combination of software programs and databases to provide TMG and its customers access to essential real time data with respect to how to purchase and procure fuel from TMG in the optimal manner and at the best prices available. The TMG platform ensures a reduction of fuel costs by facilitating tactical decisions and also provides the opportunity to analyze the data so as to make strategic decisions. The following are some key features of the TMG platform:

**Integration of data:** Normal day-to-day fuel management involves a number of systems and usually involves much spreadsheet work, duplication of data and manual touches to integrate the different systems. The platform data-level integration eliminates duplication, speeds up production of reports and manual collation of data, integrates different systems with a consistent set of data and provides better and more consistent data for decision making.

**Fuel procurement snapshot:** The fuel procurement screen provides a snapshot for all sites in a single screen, which allows for quick decision-making. The snapshot includes, in a single screen, a list of all sites and their respective statuses, physical inventory, forecasted consumption and minimum and maximum number of loads that can be dispatched.

**Procurement optimization by moving up the supply chain:** The platform is not only geared towards providing a reduction of fuel costs by facilitating tactical decisions, but also provides an opportunity to analyze the data so as to make strategic decisions. This is accomplished by encouraging all suppliers to provide a breakup of the delivered costs into product and freight, which facilitates a comparison of the freight component with the freight in that market area, thereby allowing a customer to check for reasonableness and ensure corrections, if necessary. The platform also provides for a comparison of the product price at the rack with industry indexes.

**Improved release life-cycle management:** The release life cycle starts from the time the release is created to dispatch a load to a site and continues until both the freight and product is paid. A release goes through many steps along the way, from site and hauler actualization to the automated matching process that verifies the validity of the actualization information. The inventory reconciliation process provides yet another check, until the freight and product payables are finally created and interfaced with the financial system. The platform provides user interfaces, reports and automated processes to manage the life cycle of a release thereby providing for an integrated and robust system that conforms to best practices.

### ***Independent Truck Stops***

In early 2004, Frank Nocito acquired a 33% equity interest in Truck Stops Direct ("TSD"), which represents 140 independent truck stops across the U.S. and provides certain benefits to its members for a small monthly fee ranging from \$600 to \$1,000 per month. Mr. Nocito assigned rights he acquired in connection with his interest in TSD to All American. Among the benefits offered by TSD are the following:

- individualized direct fleet marketing





- reduced transaction fees with the major fleet cards
- better than wholesale discounts on shop and store merchandise
- reduced pricing for TripPak services
- competitive monthly retainer fee and no “per gallon” marketing fees or other special charges
- reduced membership retainer fees for multiple locations
- no lengthy contracts (60-day written notice of termination by either party)
- limited network of travel centers, with no overlapping of locations

Provided that the acquisition is completed, TSD has orally committed to grant All American the right to acquire the remaining stock of TSD and immediately thereafter, enter into license agreements with the majority of existing TSD members such that each independent truck stop now uses the name “All American Plazas”. The license agreements will provide better credit terms for fuel purchases, cheaper fuel prices, proprietary credit cards and a new customer base utilizing All American’s already existing cost plus contracts with national truck fleets to the truck stop owner(s)/licensees.

Through the licensing agreements with the TSD members and the use of the TMG platform for such TSD members, All American believes it will be able to significantly expand the All American Plaza brand and generate recurring revenues without incurring the initial capital expenses of building or acquiring a new truck stop. These revenues are primarily pre-tax profits, generated without acquiring the actual bricks and mortar, employees, debt, carrying costs and all of the other costs associated with direct truck stop ownership. All American anticipates that it will establish and create non-capital intensive, high profit margins, and recurring revenues during fiscal year 2005 with the implementation and integration of the TMG platform and management assistance.

#### ***Cost Plus Supply Agreements with Truck Fleets***

All American has entered into “Cost Plus” supply agreements with a substantial number of major national trucking companies, such as JB Hunt, Werner Enterprises, USA Truck, Pensken Truck Leasing and Prime Inc. These contracts provide that the truck fleets will pay a set margin over All American’s cost of fuel. National truck fleets will not allow their drivers to purchase fuel at truck stops that are not party to cost plus supply agreements with them. The agreements result in increased revenues and stable, predictable profits for All American. The advantage for the truck fleets is that they have long term fuel supply agreements which provide fair pricing over time while lessening the volatility of fuel prices.

#### ***All American Realty & Construction, Inc.***

In 2005, All American formed a wholly owned subsidiary named All American Realty & Construction, Inc. (AARC) for the purpose of real estate development and construction. Future development will create additional revenues from the substantial undeveloped surplus real estate All American owns at its truck plazas. All American has more than 150 acres of real estate which is not being utilized by the truck plaza business and has engaged an outside real estate company to produce a full land use survey.

#### **Competition**

The United States truck stop industry is highly competitive and fragmented. All American has two primary sources of competition: (1) limited service “pumper” truck stops, which focus on providing fuel, typically at discounted prices, while offering only limited additional products and services, and (2) multi-service travel centers, which offer professional drivers and the public a wider range of products and services. All American believes there are approximately 2,400 multi-service and pumper truck stops located in the United States. Approximately 30% of the truck stops are operated by five national chains and such national chains accounted for approximately 83% of all diesel fuel gallons sold over-the-road.



The three industry leaders in truck plazas are Flying J Inc., Pilot Corporation and Petro Stopping Centers, L.P..

***Flying J Inc.***

Established as a small petroleum marketing company in 1968 with four retail gasoline stations, Flying J Centers Holdings, L.P. has grown to become the largest retail distributor of diesel fuel in North America. Flying J is a fully integrated petroleum company engaged in the exploration, production, refining, transportation, wholesaling and retail marketing of petroleum products. Employing 11,500 people nationwide, the company also owns and operates travel plazas, convenience stores, restaurants, motels and truck service centers. In addition, Flying J's affiliated companies offer a variety of services including, insurance, financial services, communication services, load and equipment facilitation services, truck fleet sales and other interstate travel services.

Flying J's sophisticated network of 165 state-of-the-art travel plazas and fuel stops is located along national highways in 41 states and three Canadian provinces. Another 27 facilities are presently under construction or in various stages of the permitting process with openings scheduled throughout the next two years.

***Pilot Corporation***

Pilot Corporation was founded in 1958 as a single, family-owned gas station in Gate City, Virginia. In 1976, Pilot built its first convenience store and began converting the rest of its locations to convenience stores. Pilot's first travel center opened in 1981, and travel centers have been the main thrust of its business since then. In 1988, Pilot began concentrating on expanding its travel center operations into a nationwide network. Pilot opened its first travel center with a fast-food concept in 1988.

By 2001, Pilot operated 65 convenience stores and 140 travel centers in 37 states. On September 1, 2001, Pilot and Marathon Ashland Petroleum (MAP) entered into an agreement to form Pilot Travel Centers (PTC). MAP is the sixth largest refiner of petroleum products in the country, and its sales are approximately \$20 billion. Pilot is currently the nation's largest operator of travel centers and largest seller of over-the-road diesel fuel. PTCs sell nearly 18% of all over-the-road diesel fuel sold in the United States. A typical PTC includes one or more nationally known chain restaurants, a broad range of retail merchandise, automobile and truck fueling facilities, and a variety of other services aimed at professional drivers and interstate travelers.

***Petro Stopping Centers, L.P.***

Petro, generally regarded as the industry's standard, was founded in 1975 to provide professional drivers the highest standards of friendliness, cleanliness, quality, value, and service. Over the past 30 years, Petro has led the truck stop industry in many innovations such as private, lockable driver showers, segregated truck fueling lanes, chain-wide breakfast, lunch and dinner buffets, 24-hour free movie theatres, a driver loyalty program and Idle/fire HVAC equipment.

**Governmental and Other Regulations**

***Government Regulation***

All American is subject to various governmental regulations. These include the collection and payment of taxes, complying with government standards, and maintaining various government permits and licenses.

All fuel island equipment must follow the standards set forth by the Bureau of Weights & Measures. The bureau inspects and tests fuel equipment twice annually. Fuel islands must also have adequate cut-off switches and systems in

the event of an accidental spill or fire. The scales at each location are tested annually. Each scale operator must have a public weighmaster license, which is issued by the Bureau of Standard Weights.

Most All American locations have eating establishments that must follow regulations set forth by the applicable State, as well as the posting of a license issued annually by the Department of Agriculture. Inspections of All American restaurants are performed by the respective States to verify compliance with restaurant standards for food storage and preparation. Fire suppression systems are also required in all cooking areas and are subject to periodic inspection.

-44-

---

Each retail store is required to post a Cigarette Dealer license (or similar license). In Pennsylvania this is issued by the Department of Revenue Bureau of Business Trust Fund.

In Pennsylvania, the Department of Health issues a certificate of registration which is required to conduct and maintain a facility in accordance with the provisions of the Controlled Substance, Drug, Device and Cosmetic Act #64, approved September 9, 1972.

All American is also subject to various standard taxes. These taxes include federal and state corporate taxes, sales tax, payroll tax, tire recycling fees, and occupancy taxes. All American also collects motor fuel taxes from customers. These motor fuel taxes are withheld by our suppliers upon our purchase of fuel and the supplier files and pays the motor fuel taxes. All American does not directly file motor fuel tax returns for gasoline or diesel.

In Pennsylvania, all "Pressure Vessels" are regulated by the Bureau of Occupational and Industrial Safety, which is part of the Pennsylvania Department of Labor and Industry. Pressure vessels include boilers that can be a component of a locations hot water and/or heating system, and also all air compressors. Air compressors are used in our truck repair facilities, and could also be part of a locations water delivery or HVAC systems. They must be registered with the State and are inspected annually.

### ***Environmental Regulations***

Environmental regulation for All American truckstops generally fall into three primary categories: (a) sewerage treatment plants; (b) stormwater and spill runoff control; (c) tanks and lines used for delivery of petroleum products; and (d) waste product disposal.

All American owns and operates four on-site sewerage treatment plants at Pennsylvania locations - Frystown, Milton, Clarks Ferry and Strattanville. All four plants must be monitored and maintained daily by licensed operators. All American does have some employees who are licensed operators but have also engaged the services of an outside company that specializes in the operation of treatment plants. They collect affluent samples, handle all reports that are submitted monthly to the State and procure any permits as required. The plants must all comply with strict standards of structural integrity and affluent concentrations, as they all discharge directly to streams and rivers.

Stormwater and spill control is critical, especially at those locations that are adjacent to waterways. Most All American locations do have some form of retention basin to catch stormwater, although most are somewhat passive in their process. Others, such as Doswell, VA actually have a system of skimmers and booms in place that are designed to actively filter the outflow. All garages and fuel islands are required to have an Oil/Water separator that is designed to catch any serious spills of petroleum products. These systems are not designed to filter rainwater, but are targeted towards spills that occur on the fuel islands or in the garages. These tanks must be periodically inspected and emptied of any petroleum products. Where possible, they are required to filter into a sewerage treatment plant, while others are piped to a retention pond.

All tanks of a certain size, whether aboveground or underground, are required to be registered with the State and are subject to periodic inspection and testing. Lines leading to pumps are also tested, normally on an annual basis. Most of All American's locations have double walled tanks that employ the use of an interstitial space to actively monitor any leaks in tanks. The leak detection systems electronically send data to the fuel desk area and an alarm would sound if a problem is detected. In addition to the electronic monitoring of tanks, All American is required by law to keep a daily log of fuel levels in the tanks, which log is reconciled daily against deliveries and product sales to spot any shortages that may be the result of a leak. The State of Pennsylvania maintains an active Underground Storage Tank Indemnification Fund ("USTIF"). AAP pays money into the USTIF based on tank capacity for diesel fuel and actual gallons of gasoline purchased.

All American must also abide by guideline relating to the disposal of waste products. All battery cores are taken back by their original suppliers. Tire casings are collected in trailers and hauled away by a certified recycler, and all oil filters are crushed and drained prior to disposal. Waste oil is either burned in our own heating systems or sold to a certified recycler.

-45-

---

### **Risk of Loss and Liability Insurance**

All American maintains all insurance in types and amounts which are customary in the industry for operations of its scope. All locations are covered by property, liability and boiler and machinery insurance. All American also maintains excess liability insurance. All American does not maintain business interruption insurance. Certain states require that All American maintain disability and/or workman's compensation insurance, and All American is in compliance with such requirements. Flood insurance is maintained on the Clark's Ferry property only.

### **Employees**

As of June 16, 2005, All American had a total of 640 employees, of which 570 were full-time and 70 were part-time. At such date, 50 of All American's full time employees were salaried and performed executive, management, or administrative functions and the remaining 520 employees were paid by the hour. All American has never had a work stoppage and management characterizes its relations with its employees as good.

### **Litigation**

There are no pending material legal proceedings against All American. Moreover, all litigation in the ordinary course of business is covered by insurance.

### **Indebtedness**

All American is party to a number of credit facilities of varying size, terms and conditions, which have been used by All American and its affiliates and subsidiaries to support their operations, for working capital and capital acquisitions for expansion.

In August 1999, All American borrowed \$10 million from GMAC, successor in interest to FMAC. The loan collateralized by first mortgages on certain properties owned by All American, and currently has an outstanding balance of approximately \$8 million. Bayview Capital loaned All American \$8 million, collateralized by a first mortgage on Milton Petro Truck Stop, which loan was subsequently assigned to Capital Crossing Bank and currently has an outstanding balance of approximately \$4.5 million. In March 2004, All American borrowed \$2.1 million dollar, all of which is currently outstanding, from Fundex Capital Corp., collateralized by a second mortgage on Milton Petro Truckstop. Such loan from Fundex currently accrues interest at the rate of 13.25% per annum and was originally payable in September 2005 but has been extended for an additional nine months.

On January 9, 2006 a contract of sale was executed, whereby Nova Ten Realty Corp, a wholly owned subsidiary of All American, agreed to purchase all the real estate and assets of a truck stop location for which All American was previously providing management services for the sum of \$3,600,000. The purchase price was paid as follows: \$2,100,000 to Sovereign Bank to satisfy the outstanding mortgage on the property, and a \$1,500,000 Note and second mortgage payable to the Seller. At closing, \$2,500,000 was borrowed by All American and Nova Ten Realty (as co-makers) from Bridge Funding, Inc., who has taken a first mortgage lien on the property now owned by Nova Ten Realty. Proceeds of the loan were used to satisfy the Sovereign Bank Loan of \$2,100,000 and the balance was used to cover interest reserve, closing costs and a loan to a related party. Repayment terms for this loan are interest only, payable monthly at the Wall Street Journal prime rate plus 8.75%, with a minimum rate of 16% per annum for twelve months. Unpaid principal and accrued interest after twelve months is due in full on February 1, 2007.

AAI is the maker of a promissory note to the sellers of All American in the amount of \$7.1 Million, secured by second mortgages on Carlisle Gables, Frystown Gables, Doswell, Carlisle Soco, Harrisburg Gables. Regarding the sellers' promissory note, AAI was to make a Three Million Dollar (\$3 million) payment in October 2004; however, AAI has requested an extension for an additional ninety (90) days to make said payment and has requested that the majority



shareholder of the seller's promissory note convert approximately \$2 million of the \$3 million dollars into equity of the soon to be formed Newco. The Sellers' under the promissory note have agreed to the extension until December 31, 2005. Furthermore, the majority shareholder is considering the conversion of approximately \$2 million dollars in debt to equity in Newco during the extension period.

-46-

---

On December 15, 2004, Timothy Harrington, the then Chief Executive Officer of Able Energy, Inc. sold an aggregate of 1,007,300 shares of Able's common stock to All American. The purchase price for the sale was \$7,500,000, of which \$2,750,000 was paid in cash and All American issued promissory notes in the aggregate principal amount of \$4,750,000 to Mr. Harrington. For the first 12 months, only interest was payable to Mr. Harrington. Thereafter, principal and interest shall be payable on a monthly basis. In the event All American and Able were to enter into any transaction pursuant to which the promissory notes become an obligation of Able and Able enters into a material financing transaction, the notes will become immediately due and payable.

On July 27, 2005, Able made a loan in the amount of \$1,730,000 to All American and All American executed and delivered a promissory note for the full amount of the loan in favor of Able. Under the terms of such promissory note, the outstanding principal of the loan bears interest at the rate of 3.5% per annum (which has been increased to 6.5% for any period the loan remains outstanding after March 30, 2006). All payments of principal and accrued interest are payable sixty days after the date of the promissory note, although All American may extend the repayment for an additional thirty days upon written request.

On January 12, 2005, All American entered into an agreement to factor accounts receivable with Crown Financial, LLC ("Crown"). In accordance with the account purchase agreement, All American received a \$2,000,000 initial advance from Crown. On the 15<sup>th</sup> and 30<sup>th</sup> of each month All American has agreed to pay Crown a fee equal to 2.5% of outstanding advances from the proceeding period. All American has agreed to pay Crown a minimum fee of \$200,000 for the first 60 days of the agreement. Notwithstanding the foregoing, All American will pay Crown a fee on January 15, 2005 equal to a per diem rate of .1666% applied to the initial advance for the period from the initial advance to January 15, 2005 in addition to \$10,000 for legal and travel expense associated with the transaction.

All American obtained financing of \$6,450,000 from Avatar Income Fund I, LLC and \$2,050,000 from Avatar Funding Group, LLC ("Avatar") on April 14, 2005, which are collateralized by a first, second or third mortgage on certain real estate owned by certain of All American and are guaranteed by an officer of All American. This financing was used to pay certain of All American's other debt obligations. At closing All American paid total closing fees of \$527,385 and any legal and inspection fees required for the financing. Repayment terms for these loans are interest only, payable monthly at the Wall Street Journal prime rate plus 7% with a minimum rate of 11%, starting June 1, 2005. Unpaid principal and accrued interest is due on November 1, 2005, the maturity date. All American has exercised its option to extend these loans for an additional six months and has paid Avatar a 2% extension fee.

In June 2005, All American obtained financing in the amount of \$5,000,000 from Lilac Ventures Master Fund Ltd (Lilac) for working capital of All American and for purposes of acquiring from CT Realty LLC, all of the issued and outstanding stock of Yosemite Development Corp. and 100% of the Membership\Unit interests in Mountainside Development, LLC. The loan is evidenced by secured debentures, which shall be repaid within two years from the date of issuance, subject to the occurrence of an event of default, with interest payable at the rate per annum equal to LIBOR plus 4%, payable on a quarterly basis beginning October 1, 2005. The loan is collateralized by real estate owned by All American in Pennsylvania and New Hampshire. In the event that Able Energy does not complete the acquisition of certain of All American's assets by June 2006, All American shall be considered in default of the loan. The mandatory prepayment amount due upon this event of default would be the greater of 125% of the principal amount or an amount as defined in the secured debenture agreement. Pursuant to the Additional Investment Right between All American and Lilac, Lilac may loan All American up to an additional \$5,000,000 on the same terms and conditions as the initial \$5,000,000 loan, except for the conversion price of the debentures. If the acquisition of certain of All American's assets by Able Energy is consummated, this loan may be assumed by Able Energy.

On May 26, 2005, All American acquired the real estate of certain properties in New Hampshire from CT Realty in the amount of \$6,700,000. This acquisition was funded through the partial proceeds of the loan from Lilac as presented in the above note 7 in the amount of \$3,200,000. The remaining amount of \$3,500,000 is a note payable to CT Realty at 8% per year with interest only until maturity in May 2010. This note was netted with receivables owed to All American by CT Realty bringing the amount of the note to \$3,039,402.

On January 9, 2006, All American obtained financing of \$3,500,000 from Columbian Bank & Trust Company (“Columbian”), collateralized by a mortgage position in certain real estate owned by All American. A portion of the financing was used to pay \$500,000 of the principal due under a loan with Avatar Funding Group and \$500,000 of a loan with Avatar Income Fund, such obligations previously disclosed in Note 9-Long Term Debt. The remaining proceeds of the loan were used as follows: \$1,600,000 for working capital, \$450,128 in loan closing, legal and title fees, \$201,250 held in escrow for an interest reserve and the balance of \$248,622 was loaned to a related party. Repayment terms for this loan are interest only, payable monthly at the Wall Street Journal Prime rate plus 4.50%. There is no prepayment penalty on the loan, provided a minimum interest of \$201,250 has been accrued and paid as of the date the loan is paid off. Unpaid principal and accrued interest is due in full on July 9, 2006. All American has an option to extend this loan for an additional six months, provided All American pays Columbian an extension fee of 2% of the outstanding balance, plus an amount of interest reserve equal to two months interest at the rate then in effect.

On February 1, 2006, All American obtained financing of \$6,500,000 from Columbian, collateralized by a mortgage position in certain real estate owned by All American and Keystone Capital Group. A portion of the financing was used to pay \$750,000 of the principal due under a loan with Avatar Funding Group and \$750,000 of a loan with Avatar Income Fund. Repayment terms for this loan are interest only, payable monthly at a fixed rate of 11.50%. There is no prepayment penalty on the loan, provided a minimum interest of \$186,875 has been accrued and paid as of the date the loan is paid off. Unpaid principal and accrued interest is due in full on August 1, 2006.

**Facilities**

All American’s facilities are designed to offer a number of benefits to truck fleet operators and drivers. These benefits generally include well-lit and fenced parking lots to enhance security for drivers, trucks, and freight; spacious parking areas and traffic flow patterns designed to reduce accidents; and fewer stops and out-of-route miles through the use of one-stop, multi-service facilities. The facilities offer separate gas and diesel fueling islands, restaurants, truck preventative maintenance and repair services, and travel and convenience stores offering an array of merchandise selected to cater to professional truck drivers’ needs during their long periods away from home. Additionally, All American provides amenities such as telephones, fax machines, computers and other communication services, photocopying and postal services. All American Plazas also offer certified truck weighing scales, truck washes, laundry facilities, private showers, game, television and movie rooms, and barber shops.

Set forth below is information with respect to existing All American Plazas as of December 2005. Full appraisals were conducted on the properties owned by All American by a professional outside appraisal company based in New York that specializes in evaluating properties of this type. All valuations are based on the “as is” market value of the fee simple estate in the facility.

Name of Facility	Description of Facility	Valuation
Frystown All American Bethel, Pennsylvania	The facility is comprised of a full-service truck stop situated on an approximately 50 acre irregularly shaped site conveniently located on the west side of Route 645, less than 1/4 mile south of exit 10 of Interstate 78. The property is equipped with [one- and two-story] restaurant/driver amenities (showers, lounge, etc.)/motel/convenience store	\$11,300,000

Clarks Ferry All  
American  
Duncannon,  
Pennsylvania

facility which was built in 1972, a part metal-and-concrete block five-bay truck repair building, and a metal maintenance building, and is 100% occupied. The improvements encompass approximately 30,000 square feet. The facility is comprised of a full-service truck stop situated \$6,300,000 on an approximately 7.4 acre irregularly shaped site conveniently located on the east side of Benvenue Road (Route 22/322), less than ½ mile south of US Route 11 / 15. The property is equipped with a 17,100 square foot truck stop facility that was built in 1990 and is 100% occupied. The improvements include 8,800 square foot one-story (w/basement) restaurant/driver amenities (showers, lounge, etc)/convenience store facility, a 2,000 square foot two-story single-family house, a 2,500 square foot two-story 8-unit single room facility, a 2,700 square foot two-story management building, and a 1,100 square foot two-story concrete maintenance building.

<b>Name of Facility</b>	<b>Description of Facility</b>	<b>Valuation</b>
Breezewood Petro <i>Breezewood, Pennsylvania (Currently operating under a long term lease with an option to purchase to be negotiated.)</i>	The facility is comprised of a full-service truck stop situated on an approximately 7.7 acre irregularly shaped site conveniently located just south of Route 30, just east of Interstate 70 and just west of Interstate 76. The property is equipped with a 16,500 square foot truck stop facility that was built in 1963 and is 100% occupied. The improvements include a 14,400 square foot one-story (w/basement) restaurant/driver amenities /convenience store facility, and an approximately 6,000 square foot two-story concrete-block truck repair building.	\$13,200,000
Carlisle Gables <i>Carlisle, Pennsylvania</i>	The facility is comprised of a full-service truck stop situated on an approximately 8.0 acre irregularly shaped site conveniently located off of Interstate 81 (Exit 52) as well as Interstate 76, or the Pennsylvania Turnpike (Exit 16). The site is equipped with a brick 3,500 square foot one-story gasoline station/convenience store and truck wash building that that was built in 1987 and is 100% occupied.	\$2,700,000
Frystown Gables <i>Myerstown, Pennsylvania</i>	The facility is comprised of a truck stop situated on an approximately 10 acre irregularly shaped site conveniently located on the east side of Route 645, less than 1/4 mile south of Exit 10 of Interstate 78. The property is equipped with a masonry-panel 2200 square foot one-story gasoline station/convenience store facility including amenities (showers) that was built in 1990 and is 100% occupied. (Note: Approximately 40 adjacent acres is owned by All American and is industrial/commercial zoned land, approved for subdivision, but no plans are currently in place to develop the land).	\$7,100,000
Doswell All American <i>Doswell, Virginia</i>	The facility is comprised of a full-service truck stop situated on an approximately 54.3 acre irregularly shaped site conveniently located on the northeast quadrant of King's Dominion Boulevard (Route 30) and Interstate 95 (Exit 98), approximately 12 miles north of Richmond, Virginia. (Note: Approximately 20 acres consist of business-zoned land that has been approved for a recreational vehicle park.) The property consists of a two-story restaurant, retail, and service building including amenities (showers), a two-story EconoLodge Motel, and a truck wash and service building and was built in 1964. The motel is a concrete block structure with 86 rooms, and the truck wash and service building is a concrete block structure with two wash and five service bays. The building area encompasses approximately 81,400 square feet. The motel, is nearing the end of an extensive renovation and is partially open.	\$10,100,000



<b>Name of Facility</b>	<b>Description of Facility</b>	<b>Valuation</b>
All American Belmont <i>Allegany County, New York</i>  (Managed not, owned)	The facility is comprised of a full-service truck stop situated on an approximately 9.4 acre irregularly shaped site conveniently located off of State Route 17 (Exit 30) and at the intersection of State Route 19 and County Road 20. The site is equipped with a frame one-story gasoline station/convenience store building (amenities not included) as well as two ancillary storage sheds (450 SF and 120 SF). The buildings were built in 1977, renovated in 1999, and are 100% occupied.	\$2,200,000
All American Carney's Point <i>Salem County, New Jersey</i>	The facility is comprised of a full-service truck stop situated on an approximately 11.0 acre irregularly shaped site conveniently located off of Interstate 95 (Exit 1), or the New Jersey Turnpike as well as Interstate-295 (Exit 2). The property is equipped with a masonry one-story gasoline station, convenience store/restaurant building (amenities not included) as well as a truck garage building. The buildings were built in 1970, renovated in 1995, and are 100% occupied. The two buildings have an aggregate area of 9,500 square feet.	\$3,200,000
Harrisburg Gables <i>Harrisburg, Pennsylvania</i>	The facility is comprised of a full-service truck stop situated on an approximately 9.7 acre irregularly shaped site conveniently located on the north side of Linglestown Road (Route 39), approximately 1/4 mile east of Exit 27 off of Interstate 81 in Harrisburg. The property is equipped with a brick 4,300 square foot one-story gasoline station/convenience store (amenities not included) and Subway franchise that was built in 1991 and is 100% occupied.	\$3,000,000
Milton Petro <i>Milton, Pennsylvania</i>	The property is comprised of a full-service truck stop situated on an approximately 71.9 acre irregularly shaped site conveniently located on the south side of Route 254, less than 1/4 mile west of Exit 215 of Interstate 80 in Milton. The property is equipped with concrete-block truck stop facilities encompassing 37,000 square feet. These facilities were built in 1992, are 100% occupied and include a 275-seat restaurant, a travel/convenience store, a driver's lounge, a truck wash, showers, scales, and a 5-bay truck repair shop.	\$15,200,000
Keystone Shortway <i>Strattanville, Pennsylvania</i>	The property is comprised of a full-service truck stop situation on an approximately 63.9 acre irregularly shaped site conveniently located on the north side of Route 322, less than a 1/4 mile south of exit 10 of Interstate 78 in Strattanville. Note that approximately 35 acres of this site is considered excess land. The property is equipped with a masonry-panel 16,650 square foot two-story multi-purpose rest area and amenities (showers) and a 5,925 square foot garage	\$5,400,000

facility, the subject improvements are 100% occupied.

*Disclaimer:* The areas (square footage and/or acreage) portrayed above are approximate values and have been rounded up or down.

## **Environmental Matters**

### ***Clarks Ferry All American***

Clarks Ferry All American has eight registered underground storage tanks (USTs) currently in use. The Clarks Ferry facility has been subject to an ongoing groundwater cleanup program since 1996. A claim was filed with the Pennsylvania Underground Storage Tank Indemnification Fund (USTIF) in 1996 and the claim has been accepted, with USTIF paying 65% of the associated costs. The site characterization and remedial action plan has been handled by Hydrocon Services since 1998. The cleanup process has been slow due to complex geology associated with the facility. Elevated amounts of benzene and MTBE are present in several monitoring wells. All American is not aware of any leaks in USTs or lines and it is likely that the source of the contamination was a gasoline spill of that occurred several years ago as a result of negligence on the part of a fuel delivery driver. After complete characterization of the site and careful consideration of remediation options, Hydrocon Services proposed a remediation program calling for the introduction of reagents to various wells on the facility. Chemical oxidation of the groundwater was completed during November and December of 2002. Upon completion of the March 2003 quarterly sampling, a Remedial Action Progress Report was submitted to the Pennsylvania Department of Environmental Protection (DEP). In addition, a Remedial Action Completion Report for the property specifying the selection of a site specific standard via pathway elimination was submitted in May 2003. A deed restriction regarding the placement of water wells within the site area will be placed on the property and a post remediation care plan instituted. In a letter of November, 2004 the PA DEP has indicated that attainment of cleanup standards have been met at this sit. No further action is required, other than testing of monitoring wells per the post remediation care plan.



***Carlisle Soco All American Truck Stop***

In November 1999, a 1,000 gallon waste oil UST was removed from the area outside of the former truck repair building and an adjacent 3,000 gallon heating oil UST was removed in April of 2002. Although no soil contamination was evident, further soil testing revealed elevated levels of lead in the area of the waste oil UST, which prompted further delineation for possible groundwater contamination. All American engaged Hydrocon Services to characterize and remediate this facility. One of six monitoring wells did produce slightly elevated levels of naphthalene above the statewide health standard. A claim was submitted to USTIF for coverage of characterization and remediation costs. The claim has been accepted at 85% reimbursement and quarterly sampling events for the following eight consecutive quarters have been conducted. No actual remediation of groundwater has occurred because the statewide health standard has been achieved. AAP received a relief of liability letter from the DEP dated February 4, 2003 for groundwater contamination at the site. A post remedial care plan will be initiated which will consist of measuring each onsite monitoring well biannually for free product. If at the end of two years, no free product is identified in the downgradient wells and no additional releases occur, the monitoring wells will be closed and the post remedial care plan will be completed. As of this date, these wells have been closed and there is no further environmental concern with this site.

***Frystown All American***

Frystown All American has 10 USTs in use, seven of which are used for the storage of usable products and three of which are part of oil/water separation systems. The facility also contains several above-ground propane tanks and ASTs used for the storage of motor oil. Frystown All American is subject to an ongoing groundwater cleanup program that started in 1998 when the old tanks and fuel islands were replaced. USTIF has accepted the claim and is covering 100% of the clean up costs. The site characterization, remedial action plan and clean up are being handled by Hafer Environmental Services. The contamination has been traced to line leaks that occurred in the old fuel islands and it is also believed that a heating oil tank replaced in the early 1990's was an additional source of contamination. A groundwater remediation system was approved by DEP in 2001 and was put into operation in early 2002. The system draws groundwater from four different wells onsite, filters out contaminants and discharges clean water to a wetlands area on the west end of the property. The groundwater treatment system was operated until September, 2005, at which time it was determined that contamination levels had been reduced to acceptable levels. PA DEP has approved the shutdown of the system and Hafer is contemplating a post remedial care plan that will call for testing over the next two years. Final closure is anticipated within the dollar coverage limits established by USTIF.

***Harrisburg Gables***

Harrisburg Gables has five USTs, each of which is in use. Harrisburg Gables has been identified as having petroleum contamination and Hydrocon Services has been handling the characterization and remediation of the property. The suspected source of the contamination is from old tanks removed in 1991, but is also possibly from runoff resulting from spills that occurred in the truck fueling operation. A Phase I study completed in early 2001 revealed that the DEP never issued any final closure relative to the contamination that occurred in 1991. Even though quarterly sampling events in 1991, 1992, 1993 indicated that groundwater was free from contaminants, the DEP required AAP to perform additional testing in 2001 before it would close the matter. New monitoring wells were drilled in 2001 and MTBE contamination was identified. A Site Characterization Report was submitted to DEP in January 2002. In May 2002, additional monitoring wells were drilled and tested. Hydrocon is has prepared a Remedial Action Completion Report for submittal to the DEP. AAP has chosen to demonstrate attainment of the site specific standard via pathway elimination for site groundwater. A deed restriction will be placed on the property prohibiting groundwater access, other than the existing wells; public water is available on the property. In a letter dated October, 2003 the PA DEP indicated that attainment of cleanup standards have been met at this site, and no further remedial actions are necessary.



***Doswell All American***

At one time, a portion of the Doswell All American facility housed an ethanol manufacturing plant. In December 1997, ECS, Ltd. completed the removal of 12 USTs that were used at the ethanol plant. The removal was uneventful in terms of the contamination and in March 1998 a complete closure report was generated by ECS recommending permanent closure with no further action required. In August 2001, under guidelines of ECS, a subcontractor was hired by AAP to remove asbestos linings from three boilers on the facility. All asbestos removal has been completed.

In the last year, this location has had three different issues that required environmental oversight and remediation. The first involved what police and environmental experts feel was an act of vandalism, when an unknown person intentionally dumped some type of used petroleum product into a storm water retention pond on the property. The pond is designed to retain this type of pollutant that occurs from normal parking lot run-off, but the volume of product introduced did require additional expertise and expense to properly control and dispose of the contamination. Cleanup is complete from this incident and there will be no long term impact to the site.

The second incident involved a tanker truck flipping over while turning into our parking lot and spilling a significant portion of its load of diesel fuel. This spill was mostly contained in the asphalt parking lot, but some product did reach a storm sewer that drains to the aforementioned retention pond. Once again, environmental cleanup specialists were brought in due the magnitude of the spill. Cleanup is complete and the cost of such was borne by the company that owned the tanker.

The third area of environmental concern also involves runoff of petroleum product into the retention pond. Several sources of the diesel fuel were suspected, such as the underground lines, transfer that house pumps and the Oil/Water ("O/W") separator. One by one, the sources were checked for tightness and found to be compliant, with the exception of the O/W separator. It was determined that it had a crack that allows groundwater to fill the separator, thereby causing any petroleum runoff to go straight to the retention pond.

***Former Carlisle All American Truck Plaza***

Although Carlisle All American Truck Plaza facility was conveyed by All American to Petro Stopping Centers, L.P. in October, 2000, All American has agreed to complete the clean up of soils and groundwater at the site, which is contaminated with elevated levels of BTEX constituents and MTBE. A claim was submitted and approved by USTIF for 100% coverage with respect to site characterization and cleanup costs associated with the property. Site characterization activities identified the leaking onsite systems which systems have been removed along with contaminated media. DEP has issued a relief of liability letter for soils based upon the site cleanup activities. With respect to groundwater contamination, Hydrocon Services operated an active pumping and filtering system on the All American property, and has since obtained permission, and moved the system to neighboring properties, where it currently operates. The remediation system is working and it is anticipated that total costs to remediate and close the site will be within the \$1MM maximum coverage amount available under the PA USTIF program. Additionally, there has been \$500,000 placed in escrow in the event this cleanup exceeds the USTIF coverage.

***Former Carlisle Texaco Truck Plaza***

This location was taken over by All American in 1984 and operated until January, 2004, when the location was shut down due to continued operating losses. The lease was set to expire in July, 2004 and the closure allowed for All American to begin the process of removing all the UST's, lines and dispensers, which was required under the terms of the lease. Upon removal of the tanks, contamination was present to the area of the diesel islands, where there had been previous problems with leaking lines. Several tons of contaminated soil were removed in 2004 in connection with the initial tank and line removal. The site has been excepted for coverage under the PA USTIF program, and a Site Characterization and Remediation Action Plan are being completed by Hydrocon Services. With PA USTIF coverage in place, any future cash outlays are expected to be minor at this site.

**Related Party Transactions**

On December 15, 2004, All American purchased 1,007,300 shares of our common stock, which as of the date of this proxy statement, constitutes approximately 32% of our issued and outstanding common stock.

On May 13, 2005, the Company entered into a \$1,750,000 line-of-credit with Entrepreneur Growth Capital, LLC and a term loan with Northfield Savings Bank for \$3,250,000. Both these loans are secured by various assets of the Able Energy, Inc.. Fees in the amount of \$167,500 were originally paid to Unison Capital Corporation, a company in which a vice president of the Company (Frank Nocito) has a related interest. Mr. Nocito also has a related party interest in All American Plazas, Inc., our largest shareholder. At the time the fees were originally paid to Unison Capital Corporation, Mr. Nocito was not an officer or director of the Company. Subsequent to the payments being made and based on discussions with Unison Capital Corporation, it was determined the \$167,500 was an inappropriate payment to a related party and Unison Capital Corporation agreed to reimburse this amount to the Company over a twelve month period beginning in October 2005.

**Management's Discussion and Analysis of Financial Condition and Results of Operation of All American Plazas, Inc (for the six months ended March 31, 2006 compared to the six months ended March 31, 2005)**

All American reported revenues of \$83,865,566 for the six months ended March, 31, 2006, which was an increase of \$15,775,744 over the same period prior year revenues of \$68,089,822. This increase can be attributed to significantly higher prices for refined distillates, as a result of the increased commodity prices in world markets. Gallons of diesel fuel sold actually increased by 1,769,416 from period to period, an increase of 7.26%. Gasoline volume decreased company wide by 245,802 gallons or 11.03%.

Gross profit margin, as a percentage of revenues, declined by 2.70%. Total dollars gross profit declined by \$322,979 from \$8,391,743 for the six month period ended March, 31, 2005, to \$8,068,764 ended for the six months ended March 31, 2006. Of the \$322,979, approximately 208,000 is related to liquid fuel and 114,000 is related to Restaurants which is in direct proportion to its drop in sales.

Operating expenses increased by \$343,902 from period to period. Greatest areas of increase were utilities(\$71,000-11%), building and equipment repairs(\$36,000-9%), general supplies(\$44,000-14%), real estate taxes(\$16,000-11%), trash & snow removal(\$27,000-25%), franchise fees(\$60,000-24%) and environmental expenses(\$85,000-472%). Environmental expenses were due to ongoing investigation and remedial effort that took place at Doswell, VA site.

General and Administrative Expenses increased by \$164,968 from period to period. The key areas of increase were payroll and benefits (\$64,000-14%), equipment repairs and depreciation (\$21,000-45%), amortization expense (\$60,000-461%), officers' life insurance (\$63,000-450%) and real estate taxes (\$9,000-43%).

Income from operations declined by \$899,803, for the six month period ended March 31, 2006 compared to the same period of the prior year. The decline is attributable to the aforementioned drop in gross profit and increase in operating and G&A expenses. The remainder is attributable to a decrease in other operating income. Interest expense increased by \$1,341,350 due to refinancing of certain debt related to the original acquisition of All American acquisition of Able Energy stock and borrowing for working capital.

-53-

---

**Management's Discussion and Analysis of Financial Condition and Results of Operations of All American (For Twelve Months Ended September 30, 2005, compared to previous period)**

All American reported revenues of \$149,625,495 for the twelve months ended September 30, 2005, which was an increase of \$18,608,330 over the prior years revenues of \$131,017,165. This increase can be attributed to significantly higher prices for refined for distillates, as a result of the increased commodity prices in the world oil markets. Gallons of diesel fuel sold actually declined by 7,093,861 from year to year, a drop of 12.55%. Gasoline volume decreased companywide by 12.4%, or 304,663 gallons. The drop in diesel and gas traffic led to volume decreases in other areas by a total of \$1,275,000...down 5.5% in the stores, down 0.6% in the garages and down 7.2% in the restaurants.

Gross Profit Margin, as a percentage of revenues, declined by 1.77%. Total dollar gross profit increased by \$718, from \$18,571,710 for the twelve months ended 9/30/04, to \$18,572,428 for the twelve months ended 9/30/05. Despite the decline in gas and diesel volume, margins per gallon were up about \$.025 on diesel fuel and \$.02 on gasoline, leading to a gross margin increase of approx. \$750,000 on sales of gas and diesel.. The increase in gas and diesel margins was offset by a similar decline in margins in stores, restaurants and garages, due to the aforementioned decline in sales.

Operating expenses decreased by \$456,525 from year-to-year. The greatest decline was in payroll, and related benefits and taxes, which declined a total of \$581,053 from year-to-year. Approx. \$160,000 of the payroll related reduction was the result of closing the Carlisle Truck Plaza in January, 2004. Rent expense also declined by approx. \$120,000 which was also a result of the closing of CTP, as well as the corporate office in Carlisle. Some expenses that increased significantly during the year were Supplies (+ \$90,000), Utilities (+ \$30,000) and Environmental (+ \$215,000). The environmental increase was due to an ongoing investigation and remedial effort that took place at the Doswell, VA site.

General and Administrative Expenses increased by \$503,735 from year-to-year. Most of the increase (\$369,665) was due to Amortization related to loan fees that were charged on various financing activities. Bad Debt expense was also increased by \$79,567 and Officers Life Insurance policies were added, resulting in an increase of \$60,324.

Income from Operations declined to \$357,450 for the twelve months ended 9/30/05, compared to \$509,673 for the twelve months ended 9/30/04. With Gross Profit being flat and operating expenses down, the decrease in Operation Income can be attributed to the previously noted increase in G & A Expenses. Interest Expense increased by \$1,675,449 during the year as a result of the increased borrowing related to the acquisition of All American shares in October, 2003 and Able Energy shares in December, 2004. A loss of \$572,246 on the equity investment in Able Energy, Inc. was also realized. The Net Income (Loss), after an Income Tax Benefit of \$805,000, was (\$1,506,491), compared to a Net Income of \$53,705 the prior year.

**Liquidity and Capital Resources**

All American's cash position increased from \$1,792,588 at 9/30/04, to \$2,795,868 at 9/30/05. During the fiscal year, cash was obtained from several sources in the total amount of approximately \$5,200,000. These sources were \$1,250,000 borrowed from Crown Financial in a factoring arrangement, \$420,000 net proceeds from Avatar Financial re-financing (total Loans were \$8,500,000), \$1,800,000 net proceeds from Lilac Venture Fund (this was related to All American Acquisition of the assets of the Tenney Mountain development in New Hampshire) and \$1,730,000 borrowed from Able Energy, Inc. Primary uses of cash during the year were reductions of principal on Long Term Debt of approximately \$900,000, capital improvements to real estate and equipment of approx. \$1,100,000, payback of loans due to the companies ESOP shareholders of approx. \$720,000, support of operations of managed truckstops in Carneys Pt., Belmont and Strattanville of approx. \$2,000,000, and approx. \$1,140,000 of loans to related entities.

**Stock Sale Completed on October 3, 2003**



All outstanding shares of stock were acquired by All American Industries Corp (“AAI”), the nominee for Chelednik Family Trust. The terms of the purchase called for \$4,000,000 to be paid to former shareholders at closing and the balance of \$7,197,272 to be paid over an eight year period. The Note held by the sellers is collateralized by a second lien on certain company owned real estate. The Note is interest free for six months and bears interest at 8% thereafter. A second lump sum payment of \$3,000,000 was due on September 30, 2004 and then monthly payments of principal and interest were to begin and be made for the next seven years. The lump sum payment was not made as due and the payment was extended until December 1, 2005.

In 1991, All American had established an Employee Stock Ownership Plan (“ESOP”) covering full-time employees. The ESOP owned 10.38% of the company stock at the time of the sale. After closing costs charged to the former shareholders, the ESOP received \$273,338 at closing, which has been placed into an escrow account by the trustee. The ESOP cannot be terminated until the shareholders are fully funded, therefore it is anticipated that the ESOP will receive full payment of the \$721,876 due it when the second lump payment is paid.

Related to the transaction, AAI obtained a loan in the amount of \$6,000,000, which is collateralized by certain real estate of ALL AMERICAN. In addition to the \$4,000,000 paid to former shareholders at closing, proceeds of this loan were used to satisfy certain obligations of AAI, which included loan fees and legal costs associated with the stock acquisition.

### **Post Acquisition - Focus on Operational Improvements**

After the acquisition, a new management team was assembled with a mission to improve bottom line profitability. Roger Roberts, VP of Operations, who has several years of experience in the operation of truck stops, convenience stores and restaurants, was brought in and immediately started to make changes to improve gross profit margins. In our stores, pricing was analyzed and made consistent across the company, better inventory controls were put in place to deter theft and monitor par levels, and several new suppliers were brought in to bid for our business. All stores were reset to be more appealing and increase sales. Pricing in All American’s restaurants was analyzed and a new menu produced to improve the offering and the bottom line.

All managers have been challenged to reduce expenditures where they can, especially in labor and supplies. In some cases, physical changes to location layout have been made to allow locations to consolidate and reduce the number of cashiers. They have been asked to bid all of their contracts for services, such as equipment repairs, refuse disposal etc. One expenditure that keeps growing by about 10% each year is health insurance. Effective January 1, 2004, the sharing of monthly premiums was modified, so that employees bear a greater share of the cost, and hopefully a greater awareness of their health care.

In August, 2004 a new, companywide inspection program was implemented to improve the overall cleanliness of All American’s sites. Periodic inspections are performed by our operational directors, who now have some oversight and input into all phases of the operation. A re-alignment of directors responsibilities also took place, to better take advantage of the strengths of our personnel.

### **Carlisle Presence is Reduced**

As part of the overall effort to boost the bottom line, management made the decision to close down two sites in Carlisle that were coming to the end of leases. The corporate office that housed several departments, including Accounts Receivable, Human resources and Claims management were moved and consolidated to the Frystown location. There were several employees who decided not to commute to Frystown, which allowed positions to be eliminated and consolidated, resulting in a significant labor savings, in addition to the rent, utilities, etc. Estimated savings are at least \$80,000 annually from the closure of this office.



A tougher call was the closing of the Carlisle Truck Plaza, which the company had operated for twenty years. The location had experienced declining sales since 1995 when Flying J opened their Carlisle site, and the slide continued when Pilot opened in 1998 and Petro opened in 2001. Consolidation in the trucking industry had also taken several customers from the site, whose diesel volume was over 600,000 gallons per month in 1994, but had dropped to around 200,000 gallons per month in the last full year of operation. A once profitable location was now losing about \$25,000 per month. Several steps had been taken to downsize and cut costs, but all proved futile in the end. The lease actually terminated on July 31, 2004, but the decision was made to close the operation in January, 2004, to reduce the losses. It also allowed us the opportunity to have all UST's removed and be off the site by the end of the lease.

-55-

---

### **Strattanville, PA Comes on Board**

In April, 2004, All American assumed the operation of the Keystone Shortway Travel Plaza on Route 80 in Pennsylvania. It is a well maintained site that adds a quality stop to our network and offers additional opportunities due to vacant property that can be sold or developed. Several operational improvements have been made at the site and they have adopted the All American name and menu to attract business. Under the Agreement, All American has agreed to operate the site for a specified time period with the option to acquire the site at a predetermined price.

### **Key Operating Indicators**

The key indicator of All American's business is diesel volume, which will have an impact on sales in other, more profitable departments. Many factors will influence diesel volume, the most critical being competition, commodity prices, seasonality and economic influences that drive freight volume.

Maintaining healthy profit margins throughout a travel plaza is important. Due to the competitive nature of diesel and gasoline sales, there are times when fuel margins are very tight. Other areas of operation, such as stores, restaurants and repair garages must be run properly to minimize the impact of thin margins on liquid sales.

Diesel volume has declined companywide, by 2% in the prior year and by 12% in the most recent year. Most of the decline has occurred at locations that rely on cash buyers who will shop for the lowest price available. The price of fuel averaged around fifty cents per gallon higher than the previous year, with price spikes during the hurricane season greater than one dollar higher when compared to the same period last year. These price increases will also drive fleets to increase fueling efforts at their own terminals, as well as in states where rack prices are more favorable.

While sales are down, profit margins have been strong. Diesel and gas margins were both up about two and one-half cents per gallon over the previous year, leading to an improvement in fuel island operations of approximately \$750,000 over the previous year. Margin percentages were consistent with prior years in other areas of operation, although overall dollar gross profits declined as a result of sales declines in stores and restaurants. With diesel and gasoline volume off, overall traffic in the plazas is down, leading to the decline in store and restaurant sales. Truck drivers as well as travelers also have less disposable income as a result of the higher prices being paid for gasoline and diesel fuel.

The volatility of diesel and gas pricing, as a commodity, has had a significant impact on the buying habits of both consumers and trucking fleets. The high price of gas and diesel also has had an impact on the processing fees that are charged by third party processors of credit card and fleet transactions, many of which are percentage based. Both of these factors have made the retail petroleum market very complex in trying to balance the need to remain competitive, with the need to improve margins to cover increasing costs.

### **Material Trends and Uncertainties**

Supply uncertainties have been a concern especially as it relates to impact that the hurricanes in the Gulf of Mexico have had on the petroleum refining and distribution system. While the petroleum industry has returned to some semblance of normalcy, there continue to be general economic concerns relative to price and supply in the future. Weather can have a significant impact on All American's business in the winter months. Winter storms can virtually shut down a highway or, as is often the case, normal travel routes are changed as drivers seek southern routes to take them around storm systems that impact the northern half of the country. This can serve to divert potential business away from the All American market area.

New competitors that enter All American's marketing area can have a material adverse impact on business. When a strong, nationwide competitor opens on the same highway as an All American, it can not only drive down volumes,

but also can also significantly reduce margins, when there is additional capacity available to satisfy the same amount of demand.

-56-

---

A major trend that seems to be impacting our industry is the need for truckers and four wheelers to make their down time much more efficient. Years ago, the typical truckstop would seat 180-200 people in their restaurants. Today, the optimum financial model calls for full service restaurant capacity to be anywhere from 80 to 120 seats, and a greater emphasis is put on fast food offerings to put travelers back on the highway quickly. All American has reacted to this trend by putting fast food offerings in several locations such as Subway restaurants.

### **Cash Flows**

Cash flow in the travel plaza industry is typically good, because a significant amount of sales are either cash, or credit sales collected in less than seven days. Cash flow at All American is adequate within the core business, but has been negatively impacted by various capital projects, the cash constraints in servicing acquisition related debt and investment in real estate ventures.

### **Economic or Industry-wide Factors Relevant to All American**

The state of the nation's economy in general can have the largest material impact upon the truck plaza operations of All American. As the economy thrives, goods and materials shipped via truck carriers increases thus having a positive impact upon the revenues and profitability of All American. Conversely, as the economy weakens, this would serve to decrease revenues and profits for All American. Another significant market risk exposure is the changing commodity prices of diesel fuel, which can affect margins, and the cost of carrying accounts receivable. Legislation that impacts the trucking industry could also have a material adverse affect upon the performance of All American if it served to reduce the number of fleets (truck traffic) on the nation's highways. In general anything that affects the trucking industry, could be a factor relevant to the performance of All American.

### **Material Short and Long-Term Risks**

Material short and long term risks would include the risk factors listed above as well as others in the industry such as changes in interest rates. Fixed interest rate obligations expose the Company to the risk that interest rates might fall and variable interest rate obligations have the risk that interest rates may raise. Shortages of fuel, increase in prices, or rationing of petroleum products can have a materially adverse effect on the operations and profitability of the Company.

Among the actions that All American has taken to address the stated risk issues surround diversification. The Company is taking a concerted effort to focus on reaching a wider audience by offering other travel related services such as greater investment in clean lower cost motel accommodations at its sites. The addition of 'bio-diesel' to the products currently offered will provide the Company with a unique opportunity to provide truckers with an alternative, home grown fuel to the traditional diesel offering. In addition, in certain locations, focus is being put on attracting the casual non-truck traveler such as vacationers to adjacent gasoline centers with convenience stores. Also, the Company's debt is in the process of being restructured so as to limit to a certain extent, the risk factors listed above.

### **Bio-Diesel Research Program**

All American, together with engineers from TransMontaine Product Services, have done an analysis of the fuel storage and delivery systems at all locations to determine the viability of offering bio-diesel. It was determined that the storage and delivery systems at some of the All American locations are configured to allow a portion of the diesel fueling lanes to be segregated, so that a location could offer both bio-diesel and low sulfur diesel, thereby satisfying all customers. On the other hand, some locations only have the capability of offering a single product, without extensive modifications being made to the fuel dispensing systems.



Contact has been made with Independence Bio-Fuels, the only company currently offering custom bio-diesel blending in Central Pa. They operate from a terminal in Middletown, Pa. that currently supplies several of the All American locations in central Pa. so we have determined that bio-diesel is available. Independence is currently working to secure terminal sites throughout Pa. to distribute their product, and they have informed us that there are at least six applications currently in front of the PA DEP for approval of bio-diesel manufacturing plants in Pa. Independence currently trucks all of their product from manufacturing plants in the Midwest, so the presence of local supply in the future is a positive step to insure that bio-diesel will be available in the markets served by All American.

Before All American commits to any large-scale rollout of bio-diesel at its locations, plans are to undertake marketing surveys with our fleet customers and independent drivers to determine the potential demand for bio-diesel. If demand is adequate, the plan will be to start offering bio-diesel on a limited basis at those locations that do not require a significant capital expenditure for storage and delivery. A large-scale rollout is scheduled in the spring of 2006, after some of the concerns about the cold weather performance of bio-diesel have been addressed.

**DIRECTORS AND MANAGEMENT OF ABLE ENERGY, INC.  
FOLLOWING THE ACQUISITION OF ALL AMERICAN**

As of the completion of the acquisition, our board of directors and executive officers will be as follows: **[ARE THE AGES BELOW CORRECT? DO ANY OF THEM NEED UPDATING?]**

<u>Name</u>	<u>Age</u>	<u>Position</u>
Gregory D. Frost	58	Chief Executive Officer and Chairman of Able Energy, Inc.
Christopher P. Westad	52	President and Director of Able Energy, Inc.
Steven M. Vella	42	Chief Financial Officer of Able Energy, Inc.
John L. Vrabel	52	Chief Operating Officer of Able Energy, Inc.
Richard A. Mitstifer	48	Executive Vice President of All American Division
Stephen Chalk	60	Director of Able Energy, Inc.
Patrick O'Neill	45	Director of Able Energy, Inc.
Edward C. Miller, Jr.	38	Director of Able Energy, Inc.
Alan E. Richards	68	Director of Able Energy, Inc.
Solange Charas	43	Director of Able Energy, Inc.
Frank Nocito	58	Vice President Business Development of Able Energy, Inc.

The following information with respect to the principal occupation or employment of each director, the principal business of the corporation or other organization in which such occupation or employment is carried on, and such nominee's business experience during the past five years, has been furnished to us by the respective director nominees:

GREGORY D. FROST, ESQ. became our CEO and Chairman in October 2005 and our General Counsel and a Director in April 2005. He previously served as General Counsel and a Director of All American Plazas, Inc., which owns approximately 32% of the Company's outstanding shares, until his resignation on March 31, 2005. From 1974 to the present, he has been a practicing attorney in the State of New York and since 1999 has been a partner of the law firm of Ferber Frost Chan & Essner, LLP (formally known as Robson Ferber Frost Chan & Essner LLP) which has in the past performed legal services for Able Energy, Inc. Mr. Frost's main areas of practice have been and continue to be mergers and acquisitions, and general corporate and securities matters. From 1975 through 1980, he was Assistant General Counsel at The Singer Company and RH Macy & Co. Thereafter, Mr. Frost spent approximately 12 years as a partner of the law firm of Bower & Gardner, managing their corporate and securities department. In 1970, Mr. Frost received a B.A. degree from New York University (Stern School). He received his Juris Doctorate in 1973 from New York Law School, and in 1979 obtained a Master of Law Degree (LLM) in Corporate Law from New York University Law School.

CHRISTOPHER P. WESTAD serves as the President. Since September 1996, Mr. Westad has served as the President of Able Energy and Able Propane and has recently been our Action CEO and Chairman prior to Mr. Frost appointment. From 1991 through 1996, Mr. Westad was a Market Manager and Area Manager for Ferrellgas Partners, L.P., a company engaged in the retail distribution of liquefied petroleum gas. From 1977 through 1991, Mr. Westad served in a number of management positions with RJR Nabisco. In 1975, Mr. Westad received a Bachelor of Arts in Business and Public Management from Long Island University--Southampton, New York.

STEVEN M. VELLA joined us in August 2005 as Chief Financial Officer. From 2003 through August 2005, he served as Senior Director of Finance and Controller of QMed Inc., a public company that provides fully configured, technology-integrated and interactive disease management. Previous to his work at QMed, Inc., from 1998 through 2002, Mr. Vella served as Vice President of Finance and Corporate Controller of Medical Resources, Inc., a formerly public company that owns and manages fixed-site outpatient medical diagnostic imaging centers. He joined

Medical Resources in November 1998, after 12 years of public accounting experience, last as a Senior Manager at Deloitte & Touche LLP. He is a graduate of Fairleigh Dickinson University with a Bachelor of Science in Accounting. He is a member of both the American Institute of Certified Public Accountants and the New Jersey Society of Certified Public Accountants.

-59-

---



JOHN L. VRABEL became our Chief Operating Officer in August 2003. His current employment contract runs through July 1, 2007. From 2000 through the present, he served as Vice President Business Development of the Company's PriceEnergy subsidiary. From 1996 to 2000, Mr. Vrabel was Vice President Business Development of Conectiv Holdings Vital Services, LLC, a subsidiary of the Company in the energy products and services sector. He received a BBA from the University of Houston, and an Executive MBA from Baldwin-Wallace College.

RICHARD A. MITSTIFER has served as the President of All American since 2003. He joined All American, which was founded by his father, in 1995. Mr. Mitstifer has more than 25 years of experience in financial services, including a commercial banking career of sixteen years, where he gained exposure to several different types of businesses from retail to manufacturing. A skilled administrator and problem solver, he has been able to make prudent business decisions throughout his career. He graduated from Muhlenberg College in 1979 with a Bachelor of Science degree in Business Administration/Accounting.

MARK BARBERA became a director in October 2005. Since 1993, he has served as CFO and a Director of Trautman Wasserman & Company Inc., a registered securities broker-dealer. Since 2000, he has also served as CFO and a Director of JIA, Inc., and CFO of Connotate, Inc., both of which are software vending companies. Prior to 1993, Mr. Barbera was Founder, President and principal shareholder of Sphere Capital Corp., a registered broker-dealer. In addition to Sphere Capital, he ran Barbera & Associates, a financial and operational consulting firm serving the registered broker-dealer community. Mr. Barbera also worked with M.D. Sass Associates, a Registered Investment Advisor. Mr. Barbera began his career with the public accounting firm of Deloitte & Touche where he was an auditor and received his license to practice as a Certified Public Accountant in the State of New York. Mr. Barbera serves as the Acting Chief Financial Officer for numerous portfolio companies of Trautman Wasserman. Mr. Barbera earned his BA degree from The State University of New York at Buffalo where he graduated Cum Laude.

STEPHEN CHALK was appointed to our board of directors effective as of February 28, 2005. From 1981 to the present, Mr. Chalk has served as the President of the Pilgrim Corporation, where he has obtained a strong background in financial management, as well as over 25 years of hotel, resort, restaurant, and real estate development experience. Mr. Chalk is a graduate of Philadelphia University with a BS in Engineering and Design.

PATRICK O'NEILL has served as a director to the Company since August 1999. Mr. O'Neill has served as the President of Fenix Investment and Development, Inc., a real estate company based in Parsippany, New Jersey for the past five years. Prior to this, Mr. O'Neill served as Vice President of Business Development for AvisAmerica, a Pennsylvania based home manufacturer. Mr. O'Neill holds a B.S. from the United States Military Academy, and has been awarded the Army Achievement Medal for his work with the Army Corps of Engineers.

EDWARD C. MILLER, JR. has served as a director to the Company since June 2000. He has been the Director of Marketing for the law firm Norris, McLaughlin & Marcus, P.A. in Somerville, New Jersey since July 1999. From May 1991 to July 1999, Mr. Miller served as Practice Development Coordinator for the Morristown, New Jersey law firm Riker, Danzig, Scherer, Hyland & Perretti, LLP. Mr. Miller received his Bachelor of Science in Marketing Management from the Syracuse University School of Management in 1991.

ALAN E. RICHARDS was appointed to our board of directors effective as of February 28, 2005. Mr. Richards has served as the President of Sorrento Enterprises Incorporated, a forensic accounting firm, from its inception in 1979 to the present. Mr. Richards brings a diverse background and 25 plus years experience in financial services, including work with government agencies such as the United States Internal Revenue Service. Mr. Richards is a graduate of Iona College with a BBA in Finance.

SOLANGE CHARAS was appointed to our board of directors effective as of May 25, 2005. In 2000, Ms. Charas founded Charas Consulting, Inc. which provides human resources consulting services. From 1999 to 2000, Ms. Charas was the Head of Human Resources for EURO RSCG Worldwide, an advertising firm which is the largest division of France-based Havas Advertising. As Head of Human Resources, she was responsible for the creation and management of all HR programs on a worldwide basis for over 200 agencies which made up EURO RSCG. From 1996 to 1999, Ms. Charas was the National Director at Arthur Anderson where she led all activities promoting a consulting product she was instrumental in creating for the firm. From 1995 to 1996, Ms. Charas was the leader of the International Compensation Team at Towers Perrin and a Senior Consultant with respect to international compensation at the Hay Group. Ms. Charas received an undergraduate degree in International Political Economy from University of California at Berkeley in 1982, and an MBA in Accounting and Finance from Cornell University's Johnson School of Management in 1988.

FRANK NOCITO became our Vice President Business Development in April 2005. Since 2004, Mr. Nocito has been Vice President of All American Plazas, Inc., which owns and operates nine truck plazas located in Pennsylvania and Virginia. All American Plazas owns approximately 38% of the outstanding common stock of our Company. In 2003, Mr. Nocito, as Vice President of All American Industries Corp., acquired all of the issued and outstanding stock of All American Plazas. In 2004, Mr. Nocito and his wife created, for the benefit of their family members, including seven children, the Chelednik Family Trust, and all the issued and outstanding stock of All American Plazas was transferred to this Trust. In 2002, as a consultant to two start-up corporations, American Truck Stop of Belmont Inc. and American Truck Stop of Carney Inc., Mr. Nocito assisted the new entities in acquiring two truck plazas located in the Northeast. Subsequent to the purchase of these two truck plazas, he became in November 2003, and remains, a vice president of both corporations. In 2001, Mr. Nocito was employed by WDF/Keyspan, Inc., as a supervisor in charge of Multi-Million Dollar conversion projects for the New York City School System, converting school facilities from coal to oil and gas systems. It should be noted that in 1996, under color of a 1994 sealed indictment that had never been acted upon, an indictment was issued against Mr. Nocito for conspiracy to commit money laundering. The charge was the result of his political activities as part of the Republican Party and events arising out of the United States Government's support of the Nicaraguan Government under the Sandinista.

## **Board of Directors Committees**

### *Audit Committee*

The Audit Committee consists of Alan E. Richards (Chairman), Edward C. Miller, Jr. and Solange Charas, all of whom are independent as defined by the rules promulgated by the Securities and Exchange Commission and Nasdaq Stock Market. The Audit Committee is responsible for determining the adequacy of our internal accounting and financial controls, reviewing the results of the audit performed by our independent public accountants, and recommending the selection of independent public accountants. The Board has determined that Alan E. Richards is an "audit committee financial expert" as defined by the Securities and Exchange Commission.

### *Compensation Committee*

The Compensation Committee determines matters pertaining to the compensation of certain executive officers of our executive officers and administers our stock option, and incentive compensation. During 2004, the Compensation Committee held no meetings. The Compensation Committee consists of Mark Barbera,, Patrick O'Neill and Solange Charas (Chairman).

### *Governance and Nominating Committee*

The Board of Directors has established a Governance and Nominating Committee for purposes of nominating directors and for all other purposes outlined in the Governance and Nominating Committee Charter, including nominees submitted to the Board of Directors by shareholders. The Governance and Nominating Committee is composed of Messrs. Mark Barbera (Chairman), Patrick O'Neil and Alan Richards.

## **BENEFICIAL OWNERSHIP OF OUR SECURITIES**

The following table sets forth information regarding the beneficial ownership of our common stock as of May 9, 2006, by:

- each person known by us to be the beneficial owner of more than 5% of our outstanding shares of common stock;
  - each of our officers and directors; and
  - all of our officers and directors as a group.



Unless otherwise indicated, we believe that all persons named in the table have sole voting and investment power with respect to all shares of common stock beneficially owned by them.

Name and Address*	Aggregate Number of Shares Beneficially Owned (1)	Percent of Class Outstanding (2)
Gregory D. Frost	1,050,000(3)	33.6%
Christopher P. Westad	35,000(4)	1.1%
Patrick O'Neill	0	--
Edward C. Miller, Jr.	0	--
Steven Chalk	0	--
Alan E. Richards	0	--
Solange Charas	0	--
Steven M. Vella	0	--
Frank Nocito	1,050,000(5)	33.6%
John Vrabel	2,300(6)	**
Timothy Harrington	0	--
Officers and Directors as a Group (11 persons)	1,137,300(7)	36.0%
Summitt Ventures, Inc. 9595 Wilshire Boulevard, Suite 510 Beverly Hills, CA 90212	142,857(8)	4.6%
All American Plazas, Inc. 1267 Hilltop Lane Myerstown, PA 17067	1,000,000(9)	32.0%

\* Unless otherwise indicated, the address for each stockholder is c/o Able Energy, Inc., 198 Green Pond Road, Rockaway, New Jersey 07866.

\*\* Represents less than 1% of the outstanding common stock.

$\frac{3}{4}\frac{3}{4}\frac{3}{4}\frac{3}{4}$

- (1) The number of shares of common stock beneficially owned by each stockholder is determined under rules promulgated by the SEC. Under these rules, a person is deemed to have "beneficial ownership" of any shares over which that person has or shares voting or investing power, plus any shares that the person has the right to acquire within 60 days, including through the exercise of stock options. To our knowledge, unless otherwise indicated, all of the persons listed above have sole voting and investment power with respect to their shares of common stock, except to the extent authority is shared by spouses under applicable law.
- (2) The percentage ownership for each stockholder is calculated by dividing (a) the total number of shares beneficially owned by the stockholder on May 9, 2006 by (b) 3,128,923 shares (the number of shares of our common stock outstanding on May 9, 2006), plus any shares that the stockholder has the right to acquire within 60 days after May 9, 2006.
- (3) Includes 50,000 shares owned by Mr. Frost. Also includes 1,000,000 shares owned by All American Plazas, Inc., of which Mr. Frost disclaims beneficial ownership. These 1,000,000 shares owned by All American Plazas, Inc. are held by the Chelednik Family Trust, of which Mr. Frost is a co-trustee. See Note (9) below.

- (4) Includes 5,000 shares and 30,000 shares which may be acquired upon the exercise of outstanding stock options.
- (5) Includes 50,000 shares owned by Mr. Nocito. Also includes 1,000,000 shares owned by All American Plazas, Inc., of which Mr. Nocito disclaims beneficial ownership. Mr. Nocito is Vice President of All American Plazas, Inc., and the shares owned by All American Plazas, Inc., are held by the Chelednik Family Trust, a trust established by Mr. Nocito and his wife for the benefit of their family members. See Note (9) below.

-62-

---

- (6) Includes 2,300 shares.
- (7) Includes 107,300 shares owned by the officers and directors and 30,000 shares which may be obtained upon the exercise of outstanding options held by the officers and directors. Also includes 1,000,000 shares owned by All American Plazas, Inc., of which Messrs. Frost and Nocito disclaim beneficial ownership. See Note (9) below.
- (8) Includes 142,857 shares. On March 1, 2005, we entered into an amendment (the "Agreement") to an existing consultant agreement with Summitt Ventures, Inc. ("Summitt"). The value of the consideration contemplated to be rendered by Summitt to us under the Agreement was \$71,428.50, and the Company issued 142,857 shares of the Company's common stock (the "Shares"), valued at \$0.50 per share, as payment. The Shares at the time of issue were unregistered, restricted shares and not subject to any registration requirement. The shares were offered only to Summitt in connection with the Agreement and, thus, were exempt from registration under Section 4(2) of the Securities Act of 1933, as amended, as not being a part of any public offering. The Shares are not convertible into any other class or series of equity. No proceeds were received by us at the time of issuance of the Shares and no proceeds have been received by the Company on account of the Agreement. On September 22, 2005, the Company terminated the Agreement with Summitt, with cause, and on October 13, 2005, the Company notified Summitt that it was canceling the certificate evidencing the Shares on the grounds that, among other things, Summitt induced us to enter into the Agreement through misrepresentation. These 142,857 shares are not counted in the 3,042,655 shares of common stock outstanding as of March 31, 2006.
- (9) Includes 1,000,000 shares owned by All American Plazas, Inc. The shares owned by All American Plazas, Inc. are held by the Chelednik Family Trust, a trust established by Mr. Nocito and his wife for the benefit of their family members, of which Mr. Frost is a co-trustee. Mr. Frost is the aggregate beneficial owner of 15.15% of All American Plazas, Inc.

### **MARKET PRICE INFORMATION AND DIVIDENDS**

Our common stock commenced trading on the Nasdaq SmallCap Market (now the Capital Market) under the symbol "ABLE" on June 29, 1999. The closing price per share of our common stock on June 15, 2005, the last trading day prior to the announcement of the execution of the asset purchase agreement, was \$18.58.

On October 13, 2005, we received a letter from the Nasdaq, notifying us that we were not in compliance with Marketplace Rule 4310(c)(2)(B)(ii) (the "Rule"). The Rule requires the Company to have a minimum \$35 million in market value of listed securities, or \$2.5 million in shareholders' equity, or \$500,000 in net income from continuing operations for the most recently completed fiscal year or two of the three most recently completed fiscal years. Nasdaq informed us that we had 30 calendar days, or until November 14, 2005, to regain compliance with the Rule. On October 19, 2005, the Company filed its Form 10-Q for the period ended September 30, 2005 reporting stockholders' equity of \$2,562,617. As a result of discussions with Nasdaq, we filed our Form 10-Q/A on October 21, 2005 to clarify certain line items in the earlier 10-Q. As a result, Nasdaq issued a letter dated October 21, 2005 indicating that the matters of its earlier letter of October 13<sup>th</sup>, were closed.

There is no established public trading market for the shares of common stock of All American.

The following table sets forth the high and low sales prices for each quarter for our common stock as reported on the Nasdaq Capital Market System from September 30, 2003 through March 31, 2006

<u>Quarter Ended</u>	<u>Common Stock</u>	
	<u>High</u>	<u>Low</u>
September 30, 2003	\$3.43	\$3.15
December 31, 2003	2.71	2.56
March 31, 2004	2.65	2.50
June 30, 2004	2.65	2.28
September 30, 2004	1.89	1.78
December 31, 2004	3.00	2.77
March 31, 2005	11.82	10.41
March 31, 2006	14.05	2.30
June 30, 2005	21.21	7.17
September 30, 2005	18.22	11.45
December 31, 2005	13.04	6.25
March 31, 2006	9.69	6.34

Holders of our common stock should obtain current market quotations for their securities. The market price of our common stock could vary at any time before the acquisition.

#### *Holder of Common Equity*

As of May 9, 2006, there were approximately \_\_\_\_\_ holders of record of our common stock.

#### *Dividends*

We have not paid any dividends on its common stock to date and do not intend to pay dividends prior to the completion of the acquisition.

#### **All American**

There is no established public trading market for the shares of common stock of All American. There are currently 3 holders of the shares of All American common stock. All American does not have any authorized or outstanding equity compensation plans.

#### *Dividends Upon Completion of the Acquisition*

Upon completion of the acquisition of All American, we do not intend to pay any dividends on our shares of common stock. Rather, we intend to reinvest any earnings back into the combined company. At this time, the combined company anticipates that it will retain any earnings and will not pay dividends in the foreseeable future. The combined company also expects that any loan or credit facilities that it enters into will limit its ability to pay dividends.

### **DESCRIPTION OF OUR SECURITIES**

Our total authorized capital stock consists of 10,000,000 shares of common stock, \$.001 par value, and 10,000,000 shares of preferred stock, \$.001 par value per share. The following descriptions contain all material terms and features of our securities, are qualified in all respects by reference to our Certificate of Incorporation and By-laws.

#### **Common Stock**

-64-

---



We are authorized to issue 10,000,000 shares of common stock, \$.001 par value per share, of which as of the date of this proxy statement, 3,128,923 shares of common stock are outstanding, not including the shares of common stock to be issued to All American pursuant to the asset purchase agreement.

The holders of common stock are entitled to one vote for each share held of record on all matters submitted to a vote of stockholders. Holders of common stock are entitled to receive ratably dividends as may be declared by the board of directors out of funds legally available therefor. In the event of a liquidation, dissolution or winding up, holders of our common stock are entitled to share ratably in all assets remaining, if any, after payment of liabilities. Holders of common stock have no preemptive rights and have no rights to convert their common stock into any other securities.

### **Preferred Stock**

Our Certificate of Incorporation authorizes the issuance of 10,000,000 shares of preferred stock, \$.001 par value per share, with designations, rights and preferences determined from time to time by our Board of Directors. Accordingly, our Board of Directors is empowered, without stockholder approval, to issue classes of preferred stock with voting, liquidation, conversion, or other rights that could adversely affect the rights of the holders of our common stock. Although we have no present intention to issue any shares of our preferred stock, there can be no assurance that we will not do so in the future. Furthermore, we may not issue any preferred stock unless such issuance is approved by our independent directors.

### **Certain Anti-Takeover Devices**

We are subject to Section 203 of the Delaware General Corporation Law, which restricts certain transactions and business combinations between a corporation and an "Interested Stockholder" owning 15% or more of the corporation's outstanding voting stock for a periods of three years from the date the stockholder becomes an Interested Stockholder. Subject to certain exceptions, unless the transaction is approved by the Board of Directors and the holders of at least 66-2/3% of the outstanding voting stock of the corporation (excluding shares held by the Interested Stockholder), Section 203 prohibits significant business transactions such as a merger with, disposition of assets to, or receipt of disproportionate financial benefits by the Interested Stockholder, or any other transaction that would increase the Interested Stockholder's proportionate ownership of any class or series of the corporation's stock. The statutory ban does not apply if, upon consummation of the transaction in which any person becomes an Interested Stockholder, the Interested Stockholder owns at least 85% of the outstanding voting stock of the corporation (excluding shares held by persons who are both directors and officers or by certain stock plans).

## **STOCKHOLDER PROPOSALS**

If the acquisition is not consummated, our special meeting of stockholders will be held on or about \_\_\_\_\_, 2006 unless the date is changed by the board of directors. If you are a stockholder and you want to include a proposal in the proxy statement for the year 2005 annual meeting, you need to provide it to us by no later than \_\_\_\_\_, 2006. You should direct any proposals to our secretary at our principal office. If you want to present a matter of business to be considered at this special meeting, under our by-laws you must give timely notice of the matter, in writing, to our secretary.

## **EXPERTS**

Our annual financial statements included in this proxy statement have been audited by Simontacchi & Company, LLP, independent registered public accounting firm, to the extent and for the period set forth in their report included herein, and are included herein in reliance upon such report given upon authority of said firm as experts in accounting and auditing. On January 4, 2006 and effective the same date, we terminated Simontacchi & Company, LLP and on January 9, 2006, we engaged Marcum & Kliegman LLP as our independent registered public accounting firm to audit

the Company's financial statements as of and for the fiscal year ending June 30, 2006 and to perform procedures related to the financial statements included in the Company's quarterly reports on Form 10-Q, beginning with the quarter ended December 31, 2005.

-65-

---

The consolidated financial statements of All American Plazas, Inc. Inc. included in this proxy statement have been audited by (a) for the years ended September 30, 2003 and 2002, Beard Miller Company LLP, independent registered public accounting firm, to the extent and for the period set forth in their report included herein, and are included herein in reliance upon such report given upon authority of said firm as experts in accounting and (b) for the year ended September 30, 2004, Maier Markey & Menashi LLP, independent public accounting firm, to the extent and for the period set forth in their report included herein, and are included herein in reliance upon such report given upon authority of said firm as experts in accounting.

#### **WHERE YOU CAN FIND MORE INFORMATION**

We file reports, proxy statements and other information with the Securities and Exchange Commission as required by the Securities Exchange Act of 1934, as amended.

You may read and copy reports, proxy statements and other information filed by us with the Securities and Exchange Commission at the Securities and Exchange Commission public reference room located at Judiciary Plaza, 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549.

You may obtain information on the operation of the Public Reference Room by calling the Securities and Exchange Commission at 1-800-SEC-0330. You may also obtain copies of the materials described above at prescribed rates by writing to the Securities and Exchange Commission, Public Reference Section, Station Place, 100 F St. NE, Washington DC 20549.

We file our reports, proxy statements and other information electronically with the Securities and Exchange Commission. You may access information on us at the Securities and Exchange Commission web site containing reports, proxy statements and other information at: <http://www.sec.gov>.

Information and statements contained in this proxy statement, or any annex to this proxy statement, are qualified in all respects by reference to the copy of the relevant contract or other annex filed as an exhibit to this proxy statement.

All information contained in this proxy statement relating to us has been supplied by us, and all such information relating to All American has been supplied by All American. Information provided by either All American or us does not constitute any representation, estimate or projection of the other.

If you would like additional copies of this proxy statement, or if you have questions about the acquisition, you should contact:

**ABLE ENERGY, INC.  
198 GREEN POND ROAD  
ROCKAWAY, NEW JERSEY 07866  
(973) 625-1012**

**ANNEX A**  
**ASSET PURCHASE AGREEMENT**

---

**ASSET PURCHASE AGREEMENT**

**BETWEEN**

**ABLE ENERGY, INC.**

**AND**

**ALL AMERICAN PLAZAS, INC.**

**June 16, 2005**

**ASSET PURCHASE AGREEMENT**

**(AS AMENDED AND RESTATED**

**FROM THE STOCK PURCHASE AGREEMENT DATED AS OF JUNE 16, 2005)**

This Asset Purchase Agreement (“Agreement”) is made as of June 16, 2005, by Able Energy, Inc., a Delaware corporation (the “Buyer”) and All American Plazas, Inc., a Pennsylvania corporation (the “Company”).

**RECITALS**

**WHEREAS**, the Buyer desires to acquire the Company’s multi-location truck stop business which includes travel stores, restaurants, diesel and gas fueling and lube facilities and motels (the “Business”); and

**WHEREAS**, the Buyer had previously entered into a Stock Purchase Agreement with all the shareholders of the Company to purchase the issued and outstanding capital stock of the Company; and

**WHEREAS**, the parties hereto wish to amend and restate the terms of such Stock Purchase Agreement in their entirety in the manner set forth in this Agreement whereby the Buyer will assume the Business through a purchase of substantially all of the assets of the Company; and

**WHEREAS**, the Buyer plans to issue shares of its unregistered, restricted common stock in consideration for the assets and rights purchased by the Buyer under this Agreement, and the Buyer is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Rule 506 of Regulation D as promulgated by the SEC under the Securities Act of 1933, as amended (the “1933 Act”).

**NOW, THEREFORE**, in consideration of the representations, warranties, promises, covenants, and agreements hereinafter contained and intending to be legally bound, the parties hereby agree as follows:

**ARTICLE I. DEFINITIONS**

For purposes of this Agreement, capitalized terms used herein have the meanings specified or referred to in Appendix A attached hereto.

**ARTICLE II. SALE; CLOSING**

*2.1 Consideration*

Subject to the terms and conditions of this Agreement, at the Closing, the Company will sell, assign and transfer substantially all of its assets, rights, liabilities (collectively, the “Assets”) to the Buyer, as set forth in Schedule 2.1, and the Buyer will purchase the Assets from the Company. The Asset shall include, without limitation, an option to purchase the Property Equity Interests. The Assets shall not include fee title to any of the Properties.

A-1

---

## 2.2 Purchase Price

(a) The purchase price (the "Purchase Price") for the Assets will be paid as follows:

(1) At the Closing, the Buyer shall deliver to the Company that number of aggregate shares of restricted common stock of the Buyer (together with the shares in (2) and (3) below, the "Able Shares") based upon a Purchase Price of Thirty Five Million (\$35,000,000) Dollars for the Assets.

a. The price of the Able Shares for purposes of calculating the \$35,000,000 Purchase Price shall be \$3.00 per share, thus the number of Able Shares delivered to the Company under Section 2.2(1) shall be 11,666,667.

b. The Able Shares reflecting payment of the Purchase Price shall be as soon as practicable following the Closing distributed (in the form of an extraordinary dividend and in compliance with all securities laws) to the stockholders of the Company in proportion to their respective equity holdings of Company, as set forth on Schedule A annexed hereto.

(2) [Intentionally omitted.]

(3) It is hereby acknowledged by the parties, that the Company has entered into a term sheet dated June 6, 2005 with a third party institutional lender to refinance the Company's debt and provide the Company with certain working capital. Such term sheet provides that the loan will be in the amount of approximately Thirty Five Million (\$35,000,000) Dollars, at an interest rate of "30-day LIBOR plus spread (adjustable rate) this is equivalent to Prime + 1.75%.", with a 25-year term and a 25-year amortization schedule. The Company and the Buyer, as appropriate, will secure the loan with a first mortgage on the Properties (including the Property Equity Interests), including improvements thereto (the "Financing"). The Financing shall be assignable without penalty at any time to the Buyer. In the event that the Company completes the Financing on or before December 31, 2005, the Buyer agrees to increase the Purchase Price by an additional Ten Million (\$10,000,000) Dollars which Purchase Price shall be paid in restricted common shares on the same basis as set forth in subparagraphs 1(a) and (b) of this paragraph. Notwithstanding anything to the contrary contained in this Agreement, the Buyer shall have the option to receive rightful title, free of any liens or other encumbrances, to any of the Company's Properties provided that the Buyer assumes all existing debt obligations relating to such applicable Properties. Such options shall be exercisable at all times provided that the Lease relating to the applicable property remains in effect. In the event the Buyer exercises such option, the Company shall cooperate in all respects to facilitate and deliver to the Buyer any documents the Buyer may require to evidence such ownership in the Properties.

(4) In connection with the Closing, the Buyer shall enter into leases with each of the Properties which be in the form set forth in Exhibit 2.2(4) (collectively, the "Leases"). It is the intention of the parties hereto that the monthly rental payments under the Lease in the aggregate for the Properties equal to the monthly aggregate debt service payments by the Company for the Properties (the "Property Debt Payments"), and the parties hereto agree to make periodic adjustments to the rental payments under the Leases to reflect such intent (including, without limitation, in the event that the Financing is consummated). The parties agree that any amounts of the Property Debt Payments which is applied to the principal balance of the applicable debt shall increase the Property Equity Interests on a dollar-for-dollar basis.

### 2.3 Closing

The purchase and sale of the Assets (the “Closing”) provided for in this Agreement will take place at the offices of the Buyer’s counsel at 530 Fifth Avenue, New York, New York, on the 1st day following the date the shareholders of the Buyer and the Company approve the within transaction based upon the Buyer’s filing of the requisite proxy statement and the Company’s receipt of its applicable consent its shareholders, or at such other time and place as the parties may agree, but in any event not prior to the receipt of the approvals and/or consents as stated in this Section 2.3.

### 2.4 Closing Obligations

At the Closing:

(a) the Company will deliver (or cause to be delivered) to the Buyer:

(i) a Bill of Sale relating to the purchase of the Assets and any other document, instrument or certificate reasonably requested by the Buyer to evidence the sale, conveyance or transfer of the Assets to the Buyer;

(ii) the Non-Competition Agreement; and

(iii) a certificate executed by the Company to the effect that, except as otherwise stated in such certificate, each of the Company’s representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date.

(b) The Buyer will deliver (or cause to be delivered) to the Company:

(i) The Able Shares; and

(ii) a certificate executed by the Buyer to the effect that, except as otherwise stated in such certificate, each of the Buyer’s representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date.

## **ARTICLE III. REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company represents and warrants to the Buyer as follows:

### 3.1 Organization and Good Standing

(a) The Company is a corporation duly organized, validly existing, and in good standing under the laws of Pennsylvania, with full corporate power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under Applicable Contracts. The Company is duly qualified to do business as a foreign corporation and is in good standing under the laws of each state or other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification and in which the failure to be so qualified would have a Material Adverse Effect on the Buyer’s ability to conduct the Company’s business following the Closing, with such jurisdictions listed on Schedule 3.1.



(b) The Company have delivered to the Buyer copies of the Organizational Documents of the Company, as currently in effect.

*3.2 Authority; No Conflict; Consents*

(a) Subject to the Petro Franchise Consents (as such term is defined in Section 5.4), this Agreement constitutes the legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by laws regarding bankruptcy, insolvency and other creditors' rights, and by principles of equity. Upon the execution and delivery by the Company of this Agreement, the Bill of Sale and the Noncompetition Agreement (collectively, the "Company Closing Documents"), the Company Closing Documents will constitute the legal, valid, and binding obligations of the applicable the Company, enforceable against them in accordance with their respective terms, except as such enforceability may be limited by laws regarding bankruptcy, insolvency and other creditors' rights, and by principles of equity. The Company have the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and the Company Closing Documents and to perform their obligations under this Agreement and the Company Closing Documents.

(b) Subject to the Petro Franchise Consents (as such term is defined in Section 5.4), except as set forth in Schedule 3.2, neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time):

(i) contravene, conflict with, or result in a violation of (A) any provision of the Organizational Documents of the Company, or (B) any resolution adopted by the board of directors or the stockholders of the Company;

(ii) contravene, conflict with, or result in a violation of, or give any Governmental Body or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under, any Legal Requirement or any Order to which the Company, or any of the assets owned or used by the Company, may be subject;

(iii) contravene, conflict with, or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate, or modify, any Governmental Authorization that is held by the Company or that otherwise relates to the business of, or any of the assets owned or used by, the Company;

(iv) cause the Buyer or the Company to become subject to, or to become liable for the payment of, any Tax;

(v) cause any of the assets owned by the Company to be reassessed or revalued by any taxing authority or other Governmental Body;

(vi) contravene, conflict with, or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Applicable Contract; or

(vii) result in the imposition or creation of any Encumbrance upon or with respect to any of the assets owned or used by the Company.

(c) Except as set forth in Schedule 3.2, the Company is not, nor will it be required to give any notice to or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

*3.3 Title; Capitalization*

A-4

---

(a) [Intentionally omitted.]

(b) The authorized equity securities of the Company consist of 100,000 shares of Class A common stock, par value \$100.00 per share, of which 25,485.16 shares are issued and outstanding as of the date hereof, and 100,000 shares of Class B common stock, par value \$100.00, of which 632 shares are issued and outstanding as of the date hereof. The Company's subsidiaries are set forth on Schedule 3.3. Except as set forth in Schedule 3.3, no legend or other reference to any purported Encumbrance appears upon any certificate representing issued and outstanding equity securities of the Company and no such Encumbrance will be in effect as of Closing. All of the outstanding equity securities of the Company have been duly authorized and validly issued and are fully paid and nonassessable. Except as set forth in Schedule 3.3, there are no Contracts relating to the issuance, sale, or transfer of any equity securities or other securities of the Company or options or rights to acquire securities of the Company, that will remain in effect at or after Closing. None of the outstanding equity securities or other securities of the Company was issued in violation of the Securities Act or any other Legal Requirement. The Company does not own, nor has any Contract to acquire, any equity securities or other securities of any Person or any direct or indirect equity or ownership interest in any other business.

### 3.4 *Financial Statements*

The Company has delivered to the Buyer: (a) audited balance sheets of the Company as at September 30 in each of the years 2002, 2003 and 2004, and the related audited statements of income for each of the fiscal years then ended, (b) an internally prepared balance sheet of the Company as at March 31, 2005 (the "Interim Balance Sheet"), and the related internally prepared statement of income for the fiscal year then ended. Such financial statements and notes fairly and materially present the financial condition and the results of operations of the Company as at the respective dates of and for the periods referred to in such financial statements.

### 3.5 *No Material Adverse Change*

Since the date of the Interim Balance Sheet, to the Company's Knowledge (a) there has not been any material adverse change in the business, operations, properties, assets, or condition of the Company and (b) no event has occurred or circumstance exists that may result in such a material adverse change other than changes, events and circumstances existing in or affecting the capital markets, and general economic and industry conditions.

### 3.6 *Absence of Certain Changes and Events*

Except as set forth in Schedule 3.6, and except for transactions expected in connection with the Contemplated Transactions, since the date of the Interim Balance Sheet, the Company has conducted the Business only in the Ordinary Course of Business and there has not been any:

- (a) change in the Company's authorized or issued capital stock; grant of any stock option or right to purchase shares of capital stock of the Company; issuance of any security convertible into such capital stock; grant of any registration rights; purchase, redemption, retirement, or other acquisition by the Company of any shares of any such capital stock; or declaration or payment of any dividend or other distribution or payment in respect of shares of capital stock;
- (b) amendment to the Organizational Documents of the Company;
- (c) payment or increase by the Company of any bonuses, salaries, or other compensation to any stockholder, director, officer, or (except in the Ordinary Course of Business) employee or entry into any employment, severance, or similar Contract with any director, officer, or employee;

(d) adoption of, or increase in the payments to or benefits under, any profit sharing, bonus, deferred compensation, savings, insurance, pension, retirement, or other employee benefit plan for or with any employees of the Company;

A-5

---

- (e) damage to or destruction or loss of any asset or property of the Company, whether or not covered by insurance, materially and adversely affecting the properties, assets, business, financial condition, or prospects of the Company;
- (f) entry into, termination of, or receipt of notice of termination of (i) any license, joint venture, credit, or similar agreement, or (ii) any Contract or transaction involving a total remaining commitment by or to the Company of at least \$25,000.00;
- (g) cancellation or waiver of any claims or rights with a value to the Company in excess of \$25,000.00;
- (h) material change in the accounting methods used by the Company;
- (i) agreement, whether oral or written, by the Company to do any of the foregoing; or
- (j) any notice by a governmental agency or quasi-governmental agency regarding the conduct of the Company's business.

### 3.7 *Books and Records*

The books of account, minute books, stock record books, and other records of the Company, all of which have been made available to the Buyer, are complete and correct in all material respects and have been maintained in accordance with practices that are customary for similar businesses. At the Closing, all of books and records relating to the Assets will be in the possession or control of the Company.

### 3.8 *No Undisclosed Liabilities*

Except as set forth in Schedule 3.8, the Company had no material liabilities or obligations of any nature required to be reflected or reserved against in the "Balance Sheet" or the Interim Balance Sheet as of the respective dates thereof in accordance with GAAP that were not so reflected, and has since the date of the Balance Sheet incurred no such liabilities other than current liabilities incurred in the Ordinary Course of Business.

### 3.9 *Environmental Matters*

Except as set forth in Schedule 3.9 :

- (a) The Company has not received any notice, report or information regarding any liabilities (whether accrued, absolute, contingent, unliquidated or otherwise), or any corrective, investigatory or remedial obligations, arising under "Environmental and Safety Requirements", with respect to the past or present operations of the Businesses, the Assets and/or the Assumed Contracts as set forth in Schedule 2.1.
- (b) The Company has obtained, and is in compliance with all terms and conditions of, all permits, licenses and other authorizations required pursuant to Environmental and Safety Requirements with respect to past or present operations of the Businesses and the Assets.
- (c) None of the following exists at any property owned or occupied by the Company: asbestos-containing material in any form or condition; polychlorinated biphenyl-containing materials or equipment.
- (d) No facts, events or conditions relating to the assets of the Company, operations of the Business and/or the Applicable Contracts will (x) prevent, hinder or limit continued compliance by Purchaser with Environmental and Safety Requirements, (y) give rise to any corrective, investigatory or remedial obligations on the part of Purchaser pursuant to Environmental and Safety Requirements, or (z) give rise to any liabilities on the part of Purchaser

(whether accrued, absolute, contingent, unliquidated or otherwise) pursuant to Environmental and Safety Requirements, including, without limitation, those liabilities relating to on-site or off-site hazardous substance releases, personal injury, property damage or natural resources damage.

A-6

---

(e) The Company has not assumed any liabilities or obligations of any third party under Environmental and Safety Requirements.

### *3.10 Taxes*

(a) The Company has filed or caused to be filed all Tax Returns that are or were required to be filed by or with respect to it, either separately or as a member of a group of corporations, pursuant to applicable Legal Requirements. The Company has delivered or made available to the Buyer copies of, and Schedule 3.10 contains a complete and accurate list of, all such Tax Returns filed since 2000. The Company has paid, or made provision for the payment of, all Taxes that have or may have become due pursuant to those Tax Returns or otherwise, or pursuant to any assessment received by the Company, except such Taxes, if any, as are listed in Schedule 3.10 and are being contested in good faith and as to which adequate reserves (determined in accordance with GAAP) have been provided in the Balance Sheet and the Interim Balance Sheet.

(b) The United States federal and state income Tax Returns of the Company have been audited by the IRS or relevant state tax authorities or are closed by the applicable statute of limitations for all taxable years through 2000. Schedule 3.10 contains a complete and accurate list of all audits of all such Tax Returns, including a reasonably detailed description of the nature and outcome of each audit. All deficiencies proposed as a result of such audits have been paid, reserved against, settled, or, as described in Schedule 3.10, are being contested in good faith by appropriate proceedings. Schedule 3.10 describes all adjustments to the United States federal income Tax Returns filed by the Company or any group of corporations including the Company for all taxable years since 1999, and the resulting deficiencies proposed by the IRS. Except as described in Schedule 3.10, the Company has not been given nor has it been requested to give waivers or extensions (or is or would be subject to a waiver or extension given by any other Person) of any statute of limitations relating to the payment of Taxes of the Company or for which the Company may be liable.

(c) The charges, accruals, and reserves with respect to Taxes on the respective books of the Company are adequate (determined in accordance with GAAP) and are at least equal to the Company's liability for Taxes. There exists no proposed tax assessment against the Company except as disclosed in the Balance Sheet or in Schedule 3.10. No consent to the application of Section 341(f)(2) of the IRC has been filed with respect to any property or assets held, acquired, or to be acquired by the Company. All Taxes that the Company is or was required by Legal Requirements to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper Governmental Body or other Person.

(d) All Tax Returns filed by (or that include on a consolidated basis) the Company are true, correct, and complete. There is no tax sharing agreement that will require any payment by the Company after the date of this Agreement.

### *3.11 Employees*

(a) Schedule 3.11 contains a complete and accurate list of the following information for each employee or director of the Company, including each employee on leave of absence or layoff status: name; job title; current compensation paid or payable; vacation accrued; and service credited for purposes of vesting and eligibility to participate under the Company's pension, retirement, profit-sharing, thrift-savings, deferred compensation, stock bonus, stock option, cash bonus, employee stock ownership (including investment credit or payroll stock ownership), severance pay, insurance, medical, welfare, or vacation plan, other "Employee Pension Benefit Plan" or "Employee Welfare Benefit Plan", or any other employee benefit plan or any Director Plan.

(b) Except as set forth in Schedule 3.11, no employee or director of the Company is a party to, or is otherwise bound by, any agreement or arrangement, including any confidentiality, non-competition, or proprietary rights agreement, between such employee or director and any other Person ("Proprietary Rights Agreement") that in any way adversely

affects or will affect (i) the performance of his duties as an employee or director of the Company, or (ii) the ability of the Company to conduct its business.

A-7

---



(c) Schedule 3.11 also contains a complete and accurate list of the following information for each retired employee or director of the Company, or their dependents, receiving benefits or scheduled to receive benefits in the future: name, pension benefit, pension option election, retiree medical insurance coverage, retiree life insurance coverage, and other benefits.

### *3.12 Employee Benefit Plans*

(a) All material employee benefit plans, contracts or arrangements to which the Company is a party or by which the Company is bound, including without limitation all pension, retirement, deferred compensation, savings, incentive, bonus, profit sharing, stock purchase, stock option, life insurance, death or survivor's benefit, health insurance, sickness, disability, medical, surgical, hospital, severance, layoff or vacation plans, contracts or arrangements (collectively the "Company Benefit Plans"), but not including the Employment Agreements, are identified in Schedule 3.12. Each of the Company Benefit Plans which is an Employee Pension Benefit Plan as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"); each such Plan being herein called a "Company Pension Plan") is intended to be exempt from tax under Sections 401 and 501 of the IRC, has been maintained and operated (to the Knowledge of the Company) in material compliance with all applicable provisions of the IRC and ERISA. No transaction has occurred with respect to the Company Pension Plans which would subject the Company to a tax, penalty, or liability for "prohibited transactions" (as such term is defined in Section 4975 of the IRC or in ERISA) There have been no material breaches of fiduciary duty by any fiduciary under or with respect to the Company Pension Plans or any other Company Benefit Plan which is an Employee Welfare Benefit Plan as defined in ERISA, and no claim is pending or threatened with respect to any Company Benefit Plan other than claims for benefits made in the Ordinary Course of Business. The Company has not incurred any material penalty imposed by the IRC or by ERISA with respect to the Company Pension Plans or any other Company Benefit Plan. No Company Benefit Plan is currently under audit by the Department of Labor or the IRS and, to the Knowledge of the Company, no such action is contemplated or under consideration.

### *3.13 Labor Relations and Employment Agreements*

(a) The Company is not a party to or bound by any collective bargaining agreement. The Company enjoys good working relationships with its employees, and there are no labor disputes pending, or to the Knowledge of the Company, Threatened, that might materially and adversely affect the condition (financial or otherwise), assets, liabilities, business, operations or prosperity of the Company. Except as disclosed in Schedule 3.13, the Company has no employment contract, severance agreement, deferred compensation agreement, consulting agreement or similar obligation (including the amendments and agreement referred to below, an "Employment Obligation") with any director, officer, employee, agent or consultant. Except as disclosed in Schedule 3.13, as of the Closing Date, the Company will have no liability for employee termination rights arising out of any Employment Obligation.

(b) No payment that is owed or may become due to any director, officer, employee, or agent of the Company will be non-deductible to the Company or subject to tax under IRC § 280G or § 4999; nor will the Company be required to "gross up" or otherwise compensate any such person because of the imposition of any excise tax on a payment to such person.

(c) Except as set forth on Schedule 3.13, the consummation of the Contemplated Transactions will not result in the payment, vesting, or acceleration of any benefit.

### *3.14 Compliance with Legal Requirements, Governmental Authorizations*

(a) Except as set forth in Schedule 3.14:

(i) the Company is, and at all times since January 1, 2000 has been, in full compliance with each Legal Requirement that is or was applicable to it or to the conduct or operation of its business or the ownership or use of any of its assets, the violation of which would have a Material Adverse Effect on the Company;

A-8

---

(ii) no event has occurred or circumstance exists that (with or without notice or lapse of time) (A) may constitute or result in a material violation by the Company of, or a material failure on the part of the Company to comply with, any Legal Requirement, or (B) may give rise to any material obligation on the part of the Company to undertake, or to bear all or any portion of the cost of, any remedial action of any nature; and

(iii) the Company has not received, at any time since January 1, 2000, any written notice or other communication from any Governmental Body or any other Person regarding any material, actual, alleged, possible, or potential violation of, or failure to comply with, any Legal Requirement which would have a Material Adverse Effect on the Company.

(iv) Schedule 3.14 contains a complete and accurate list of each Governmental Authorization that is held by the Company or that otherwise relates to the business of, or to any of the assets owned or used by, the Company. Each Governmental Authorization listed or required to be listed in Schedule 3.14 is valid and in full force and effect. Except as set forth in Schedule 3.14:

(v) the Company is, and at all times since January 1, 2000 has been, in material compliance with all of the terms and requirements of each Governmental Authorization identified or required to be identified in Schedule 3.14;

(vi) no event has occurred or circumstance exists that may (with or without notice or lapse of time) (A) constitute or result directly or indirectly in a material violation of or a failure to comply with any term or requirement of any Governmental Authorization listed or required to be listed in Schedule 3.14, or (B) result directly or indirectly in the revocation, withdrawal, suspension, cancellation, or termination of, or any modification to, any Governmental Authorization listed or required to be listed in Schedule 3.14;

(vii) the Company has not received, at any time since January 1, 2000, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any material actual, alleged, possible, or potential violation of or failure to comply with any term or requirement of any Governmental Authorization, or (B) any actual, proposed, possible, or potential revocation, withdrawal, suspension, cancellation, termination of, or modification to any Governmental Authorization listed on Schedule 3.14; and

(viii) all applications required to have been filed for the renewal of the Governmental Authorizations listed or required to be listed in Schedule 3.14 have been duly filed on a timely basis with the appropriate Governmental Bodies, and all other filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Bodies.

The Governmental Authorizations listed in Schedule 3.14 collectively constitute all of the Governmental Authorizations necessary to permit the Company to lawfully conduct and operate its business in the manner it currently conducts and operate such business and to permit the Company to own and use its assets in the manner in which it currently owns and uses such assets.

### *3.15 Legal Proceedings; Orders*

(a) Except as set forth in Schedule 3.15, there is no pending Proceeding:

- (i) that has been commenced by or against the Company or that otherwise relates to or may affect the business of, or any of the assets owned or used by, the Company that would, if determined adversely to the Company, have a Material Adverse Effect on the Company; or
- (ii) that challenges, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Contemplated Transactions.

To the Knowledge of the Company, (1) no such Proceeding has been Threatened, and (2) no event has occurred or circumstance exists that may give rise to or serve as a basis for the commencement of any such Proceeding. The Company has delivered to the Buyer copies of all pleadings, correspondence, and other documents relating to each Proceeding listed in Schedule 3.15. The Proceedings listed in Schedule 3.15 will not have a Material Adverse Effect on the Company.

(b) Except as set forth in Schedule 3.15:

- (i) there is no Order to which the Company, or any of the assets owned or used by the Company, is subject to, the violation of or compliance with which would have a Material Adverse Effect on the Company;
- (ii) the Company is not subject to any Order that relates to the business of, or any of the assets owned or used by, the Company, the violation of or compliance with which would have a Material Adverse Effect on the Company; and
- (iii) no officer, director, agent, or employee of the Company is subject to any Order that prohibits such officer, director, agent, or employee from engaging in or continuing any conduct, activity, or practice relating to the business of the Company.

(c) Except as set forth in Schedule 3.15:

- (i) the Company is, and at all times since January 1, 2000 has been, in full compliance with all of the terms and requirements of each Order to which it, or any of the assets owned or used by it, is or has been subject;
- (ii) no event has occurred or circumstance exists that may constitute or result in (with or without notice or lapse of time) a violation of or failure to comply with any term or requirement of any Order to which the Company, or any of the assets owned or used by the Company, is subject; and
- (iii) the Company has not received, at any time since January 1, 2000, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding any actual, alleged, possible, or potential violation of, or failure to comply with, any term or requirement of any Order to which the Company, or any of the assets owned or used by the Company, is or has been subject.

### 3.16 *Contracts; No Defaults*

(a) Schedule 3.16(a) contains a complete and accurate list, and the Company has delivered to the Buyer true and complete copies, of:

- (i) each Applicable Contract that involves performance of services or delivery of goods or materials by the Company of an amount or value in excess of \$25,000;

- (ii) each Applicable Contract that was not entered into in the Ordinary Course of Business and that involves expenditures or receipts of the Company in excess of \$15,000;
- (iii) each lease, rental or occupancy agreement, license, installment and conditional sale agreement, and other Applicable Contract affecting the ownership of, leasing of, title to, use of, or any leasehold or other interest in, any real or personal property (except personal property leases and installment and conditional sales agreements having a value per item or aggregate payments of less than \$30,000 or with terms of less than one year);
- (iv) each licensing agreement or other Applicable Contract with respect to patents, trademarks, copyrights, or other intellectual property, including agreements with current or former employees, consultants, or contractors regarding the appropriation or the non-disclosure of any of the Intellectual Property Assets;
- (v) each collective bargaining agreement and other Applicable Contract to or with any labor union or other employee representative of a group of employees;
- (vi) each joint venture, partnership, and other Applicable Contract (however named) involving a sharing of profits, losses, costs, or liabilities by the Company with any other Person;
- (vii) each Applicable Contract containing covenants that in any way purport to restrict the business activity of the Company or any Affiliate of the Company or limit the freedom of the Company or any Affiliate of the Company to engage in any line of business or to compete with any Person;
- (viii) each Applicable Contract providing for payments to or by any Person based on sales, purchases, or profits, other than direct payments for goods;
- (ix) each power of attorney that is currently effective and outstanding;
- (x) each Applicable Contract entered into other than in the Ordinary Course of Business that contains or provides for an express undertaking by the Company to be responsible for consequential damages;
- (xi) each written warranty, guaranty, and or other similar undertaking with respect to contractual performance extended by the Company other than in the Ordinary Course of Business; and
- (xii) each amendment, supplement, and modification (whether oral or written) in respect of any of the foregoing.

The Applicable Contracts designated by an asterisk on Schedule 3.16(a) shall be considered “Material Contracts”.

(b) Except as set forth in Schedule 3.16(b), no officer or director of the Company and, to the Knowledge of the Company, no agent, employee, consultant, or contractor of the Company is bound by any Contract that purports to limit the ability of such officer, director, agent, employee, consultant, or contractor to (A) engage in or continue any conduct, activity, or practice relating to the business of the Company, or (B) assign to the Company or to any other Person any rights to any invention, improvement, or discovery.

(c) Except as set forth in Schedule 3.16(c), to the Knowledge of the Company, each Contract identified or required to be identified in Schedule 3.16(a) is in full force and effect and is valid and enforceable in accordance with its terms.

(d) Except as set forth in Schedule 3.16(d):

(i) the Company is in material compliance with all applicable terms and requirements of each Material Contract under which the Company has or had any obligation or liability or by which the Company or any of the assets owned or used by the Company is or was bound;

(ii) to the Knowledge of the Company, each other Person that has or had any obligation or liability under any Contract under which the Company has or had any rights is, and at all times since January 1, 2000 has been, in full compliance with all applicable terms and requirements of such Contract;

(iii) to the Knowledge of the Company, no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with, or result in a violation or breach of, or give the Company or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Applicable Contract; and

(iv) the Company has not given to or received from any other Person, at any time since January 1, 2000, any written notice or other communication regarding any actual, alleged, possible, or potential violation or breach of, or default under, any Contract.

(e) There are no renegotiations of, attempts to renegotiate, or outstanding rights to renegotiate any material amounts paid or payable to the Company under current or completed Contracts with any Person and no such Person has made written demand for such renegotiation.

(f) The Contracts relating to the provision of services by the Company have been entered into in the Ordinary Course of Business and have been entered into without the commission of any act alone or in concert with any other Person, or any consideration having been paid or promised, that is or would be in violation of any Legal Requirement.

### 3.17 *Insurance*

(a) The Company has delivered to the Buyer:

(i) true and complete copies of all policies of insurance to which the Company is a party or under which the Company, or any director of the Company, is or has been covered at any time within the year preceding the date of this Agreement; and

(ii) true and complete copies of all pending applications for policies of insurance.

(b) Schedule 3.17(b) describes:

(i) any self-insurance arrangement by or affecting the Company, including any reserves established thereunder; and

(ii) all obligations of the Company to provide insurance for third parties (including such obligations under leases and service agreements) and identifies the policy under which such coverage is provided.

(c) Except as set forth on Schedule 3.17(c):

(i) all policies to which the Company is now a party or that now provide coverage to the Company or any director or officer of the Company:

A) are valid, outstanding, and enforceable;

B) taken together, provide insurance coverage for the assets and the operations of the Company for all risks normally insured against by a Person carrying on the same business or businesses as the Company;

C) are sufficient for compliance with all Legal Requirements and Contracts to which the Company is a party or by which any of them is bound;

D) will continue in full force and effect following the consummation of the Contemplated Transactions; and

E) do not provide for any retrospective premium adjustment or other experienced-based liability on the part of the Company.

(ii) the Company has not received (A) any refusal of coverage or any notice that a defense will be afforded with reservation of rights, or (B) any notice of cancellation or any other indication that any insurance policy is no longer in full force or effect or will not be renewed or that the issuer of any policy is not willing or able to perform its obligations thereunder; and

(iii) the Company has paid all premiums due, and has otherwise performed all of its obligations, under each policy to which the Company is a party or that provides coverage to the Company or directors thereof.

### 3.18 *Title to and Condition of Assets*

Except as disclosed in Schedule 3.18, the Company has good and marketable title to all material personal and real properties and assets reflected in the Interim Balance Sheet or acquired subsequent to December 31, 2002 (other than property and assets disposed of in the Ordinary Course of Business), free and clear of all liens or encumbrances of any kind whatsoever; provided, however, that the representations and warranties contained in this sentence do not cover liens or encumbrances that: (i) are reflected in the Interim Balance Sheet or in Schedule 3.18; (ii) represent liens of current taxes not yet due or which, if due, may be paid without penalty, or which are being contested in good faith by appropriate proceedings; and (iii) represent such imperfections of title, liens, encumbrances, zoning requirements and easements, if any, as are not substantial in character, amount or extent and do not materially detract from the value, or interfere with the present use, of the properties and assets subject thereto.

### 3.19 *Intellectual Property*

(a) Intellectual Property Assets The term “Intellectual Property Assets” means:

(i) the name “All American Plazas” or any variation or derivation thereof, all fictional business names, trading names, registered and unregistered trademarks, service marks, and applications owned, used or licensed to the Company (collectively, “Marks”); and

(ii) all know-how, trade secrets, confidential information, customer lists, software, technical information, data, and process technology (collectively, “Trade Secrets”) owned, used, or licensed by the Company as licensee or licensor.

(b) Agreements Schedule 3.19(b) contains a complete and accurate list and summary description, including any royalties paid or received by the Company, of all Contracts relating to the Intellectual Property Assets to which the Company is a party or by which the Company is bound, except for any license implied by the sale of a product and perpetual, paid-up licenses for commonly available software programs with a value of less than \$30,000 under which the Company is the licensee. There are no outstanding and, to the Company's Knowledge, no Threatened disputes or disagreements with respect to any such agreement.

(c) Know-How Necessary for the Business

(i) The Company is the owner of all right, title, and interest in and to each of the Intellectual Property Assets, free and clear of all Encumbrances, or has the right to use the Intellectual Property Assets without payment to a third party.

(ii) To the Company's Knowledge, except as set forth in Schedule 3.19(c), no employee of the Company has entered into any Contract that restricts or limits in any way the scope or type of work in which the employee may be engaged or requires the employee to transfer, assign, or disclose information concerning his work to anyone other than the Company.

(d) Trademarks

Schedule 3.19(d) contains a complete and accurate list and summary description of all Marks. The Company is the owner of all right, title, and interest in and to each of the Marks, free and clear of all liens, security interests, charges, encumbrances, equities, and other adverse claims.

(e) Trade Secrets The Company has good title and an absolute (but not necessarily exclusive) right to use the Trade Secrets. To Company's Knowledge, no Trade Secret is subject to any adverse claim or has been challenged or threatened in any way.

### 3.20 *Certain Payments*

Except as set forth in Schedule 3.20, since January 1, 2000, neither the Company nor any director, officer, agent, or employee of the Company, or any other Person associated with or acting for or on behalf of the Company, has directly or indirectly (a) made any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment to any Person, private or public, regardless of form, whether in money, property, or services (i) to obtain favorable treatment in securing business, (ii) to pay for favorable treatment for business secured, or (iii) to obtain special concessions or for special concessions already obtained, for or in respect of the Company or any Affiliate of the Company, in violation of any Legal Requirement, or (b) except in the Ordinary Course of Business established or maintained any fund or asset that has not been recorded in the books and records of the Company.

### 3.21 *Related Party Transactions*

Except as disclosed in Schedule 3.21, the Company has no contract, extension of credit, business arrangement or other relationship of any kind with any of the following persons: (i) any executive officer or director (including any person who has served in such capacity since January 1, 2000) of the Company; (ii) any shareholder owning five percent (5%) or more of the outstanding Company Common Stock; and (iii) any "associate" (as defined in Rule 405 under the Securities Act) of the foregoing persons or any business in which any of the foregoing persons is an officer, director, employee or five percent (5%) or greater equity owner. Each such contract or extension of credit disclosed in Schedule 3.21, except as otherwise specifically described therein, has been made in the Ordinary Course of Business on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable arms' length transactions with other persons that do not involve more than a normal risk of collectibility or present



other unfavorable features.

3.22 *Brokers or Finder*

A-14

---

[intentionally omitted]

### 3.23 *Legal Representation*

The Company has been represented by legal counsel in connection with the Contemplated Transactions.

### 3.24 *Disclosure*

Neither this Agreement, nor any financial statement, schedule (including without limitation its Schedules to this Agreement), certificate, or other statement or document delivered by the Company to the Buyer in connection herewith contains any statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact or omits to state any material fact necessary to make the statements contained herein or therein not false or misleading.

### 3.25 *Investment Representations*

The Company represents and warrants that:

(a) Investment Purpose The Company is acquiring the Able Shares for its own account for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the 1933 Act, except that the Company may distribute the Able Shares to its shareholders in the form of a one-time extraordinary dividend, subject to applicable securities laws.

(b) Accredited Investor Status The Company and each shareholder who is contemplated to receive any shares of Able Shares in connection with any dividend distribution by the Company as contemplated by this Agreement is an “accredited investor” as that term is defined in Rule 501(a) of Regulation D.

(c) Reliance on Exemptions The Company understands that the Able Shares are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Buyer is relying in part upon the truth and accuracy of, and the Company’s compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Company set forth herein in order to determine the availability of such exemptions and the eligibility of the Company to acquire the Able Shares.

(d) Information The Company and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Buyer and materials relating to the offer and sale of the Able Shares, which have been requested by the Company. The Company and its advisors, if any, have been afforded the opportunity to ask questions of the Buyer. Neither such inquiries nor any other due diligence investigations conducted by the Company or its advisors, if any, or its representatives shall modify, amend or affect the Company’s right to rely on the Buyer’s representations and warranties contained herein. The Company understands that any of its shareholders who may receive Able Shares may be required by the Buyer to execute additional documentation the Buyer may reasonably require to ensure the Buyer’s compliance with applicable securities laws.

(e) No Governmental Review The Company understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Able Shares or the fairness or suitability of the investment in the Able Shares nor have such authorities passed upon or endorsed the merits of the offering of the Able Shares.

(f) Transfer or Resale The Company understands that: (i) the Able Shares have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) the Company shall have delivered to the Buyer an opinion of counsel, in a

generally acceptable form, to the effect that such Able Shares to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) the Company provides the Buyer with reasonable assurance that such Able Shares can be sold, assigned or transferred pursuant to Rule 144 promulgated under the 1933 Act, as amended, (or a successor rule thereto) (“Rule 144”); (ii) any sale of the Able Shares made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if Rule 144 is not applicable, any resale of the Able Shares under circumstances in which the seller (or the person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (iii) neither the Buyer nor any other person is under any obligation to register the Able Shares for resale under the 1933 Act or any state securities laws or to comply with the terms and conditions of any resale exemption thereunder.

A-15

---

(g) Legends The Company understands that the certificates or other instruments representing the Able Shares, until such time as the sale of the Able Shares have been registered under the 1933 Act, shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, OR (B) AN OPINION OF COUNSEL, IN A GENERALLY ACCEPTABLE FORM, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS OR (II) UNLESS SOLD PURSUANT TO RULE 144 UNDER SAID ACT.

The legend set forth above shall be removed and the Buyer shall issue a certificate without such legend to the holder of the Able Shares upon which it is stamped, if, unless otherwise required by state securities laws, (i) such Able Shares are registered for sale under the 1933 Act, (ii) in connection with a sale, assignment or other transfer, such holder provides the Buyer with an opinion of counsel, in a generally acceptable form, to the effect that such sale, assignment or transfer of the Able Shares may be made without registration under the 1933 Act, or (iii) such holder provides the Buyer with reasonable assurance that the Able Shares can be sold, assigned or transferred pursuant to Rule 144 without any restriction as to the number of securities acquired as of a particular date that can then be immediately sold.

(h) Validity; Enforcement This Agreement has been duly and validly authorized, executed and delivered on behalf of the Company and is a valid and binding agreement of the Company enforceable against the Company in accordance with its terms, subject as to enforceability to general principles of equity and to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

#### **ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF THE BUYER**

The Buyer represents and warrants to the Company as follows:

##### *4.1 Organization and Good Standing*

The Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of New Jersey, with full corporate power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all of its obligations.

##### *4.2 Authority; No Conflict; Consents*

(a) This Agreement constitutes the legal, valid, and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, except as such enforceability may be limited by laws regarding bankruptcy, insolvency, and other creditors' rights, and by principles of equity. Upon the execution and delivery by the Company of the Company Releases and upon execution and delivery by the Buyer of the Able Shares and the Buyer's representation herein contained (collectively, the "Buyer's Closing Documents"), the Buyer's Closing Documents will constitute the legal, valid, and binding obligations of the Buyer, enforceable against the Buyer in accordance with their respective terms, except as such enforceability may be limited by laws regarding bankruptcy, insolvency, and other creditors' rights, and by principles of equity. The Buyer has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and the Buyer's Closing Documents and to perform its obligations under this Agreement and the Buyer's Closing Documents. The Buyer has the absolute and unrestricted right, power, authority and capacity to

execute and deliver this Agreement and to perform its obligations under this Agreement. At the Closing, the Buyer will have the absolute and unrestrictive right, power, authority and capacity to execute and deliver the Buyer's Closing Documents and to perform its obligations thereunder.

A-16

---

(b) Except as set forth in Schedule 4.2(b) neither the execution and delivery of this Agreement by the Buyer nor the consummation or performance of any of the Contemplated Transactions by the Buyer will give any Person the right to prevent, delay, or otherwise interfere with any of the Contemplated Transactions pursuant to:

- (i) any provision of the Buyer's Organizational Documents;
- (ii) any resolution adopted by the board of directors or the stockholders of the Buyer;
- (iii) any Legal Requirement or Order to which the Buyer may be subject;
- (iv) any Contract to which the Buyer is a party or by which the Buyer may be bound; or
- (v) any transaction or contract which the Buyer is contemplating.

(c) Except as set forth in Schedule 4.2(b), the Buyer is not and will not be required to obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

#### 4.3 *Investment Intent*

[intentionally omitted].

#### 4.4 *Certain Proceedings*

There is no pending Proceeding that has been commenced against the Buyer and that challenges, or may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Contemplated Transactions. To the Buyer's knowledge, no such Proceeding has been Threatened.

#### 4.5 *Brokers or Finders*

The Buyer and its officers and agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement and will indemnify and hold the Company harmless from any such payment alleged to be due by or through the Buyer as a result of the action of the Buyer or its officers or agents.

#### 4.6 *No Undisclosed Liabilities*

Except as set forth in Schedule 4.6, the Buyer has no liabilities or obligations of any nature (whether known or unknown and whether absolute, accrued, contingent, or otherwise) except for liabilities or obligations reflected or reserved against in the Buyer Financial Statements and current liabilities incurred in the Ordinary Course of Business since the respective dates thereof.

#### 4.7 *Taxes*

The Buyer has filed or caused to be filed all Tax Returns that are or were required to be filed by or with respect to it, either separately or as a member of a group of corporations, pursuant to applicable Legal Requirements. The Buyer has paid, or made provision for the payment of, all Taxes that have or may have become due pursuant to those Tax Returns or otherwise, or pursuant to any assessment received by the Buyer, except such Taxes, if any, as are listed in Schedule 4.7 and are being contested in good faith and as to which adequate reserves (determined in accordance with GAAP) have been provided in the financial statements available to the public.



*4.8 Compliance with Legal Requirements, Governmental Authorizations*

(a) Except as set forth in Schedule 4.8

(i) the Buyer is, and at all times since January 1, 2000 has been, in full compliance with each Legal Requirement that is or was applicable to it or to the conduct or operation of its business or the ownership or use of any of its assets;

(ii) no event has occurred or circumstance exists that (with or without notice or lapse of time) (A) may constitute or result in a violation by the Buyer of, or a failure on the part of the Buyer to comply with, any Legal Requirement, or (B) may give rise to any obligation on the part of the Buyer to undertake, or to bear all or any portion of the cost of, any remedial action of any nature;

(iii) the Buyer has not received, at any time since January 1, 2000, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible, or potential violation of, or failure to comply with, any Legal Requirement, or (B) any actual, alleged, possible, or potential obligation on the part of the Buyer to undertake, or to bear all or any portion of the cost of, any remedial action of any nature;

(iv) the Buyer is, and at all times since January 1, 2000 has been, in full compliance with all of the terms and requirements of each Governmental Authorization identified or required to be identified in Schedule 4.8;

(v) no event has occurred or circumstance exists that may (with or without notice or lapse of time) (A) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Governmental Authorization listed or required to be listed in Schedule 4.8, or (B) result directly or indirectly in the revocation, withdrawal, suspension, cancellation, or termination of, or any modification to, any Governmental Authorization listed or required to be listed in Schedule 4.8;

(vi) the Buyer has not received, at any time since January 1, 2000, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible, or potential violation of or failure to comply with any term or requirement of any Governmental Authorization, or (B) any actual, proposed, possible, or potential revocation, withdrawal, suspension, cancellation, termination of, or modification to any Governmental Authorization; and

(vii) all applications required to have been filed for the renewal of the Governmental Authorizations listed or required to be listed in Schedule 4.8 have been duly filed on a timely basis with the appropriate Governmental Bodies, and all other filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Bodies.

The Governmental Authorizations listed in Schedule 4.8 collectively constitute all of the Governmental Authorizations necessary to permit the Buyer to lawfully conduct and operate its business in the manner they currently conduct and operate such businesses and to permit the Buyer to own and use its assets in the manner in which it currently owns and uses such assets.



#### 4.9 *No Material Adverse Change*

Since the date of the Buyer Interim Balance Sheet, there has not been any Material Adverse Change in the business, operations, properties, assets, or condition of the Buyer and no event has occurred or circumstance exists that may result in such a Material Adverse Change other than changes, events and circumstances existing in or affecting the capital markets, and general economic and industry conditions.

#### 4.10 *Disclosure*

Neither this Agreement, nor any financial statement, schedule (including without limitation its Schedules to this Agreement), certificate, or other statement or document delivered by the Buyer to the Company in connection herewith contains any statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact or omits to state any material fact necessary to make the statements contained herein or therein not false or misleading.

### **ARTICLE V. COVENANTS OF THE COMPANY PRIOR TO CLOSING DATE**

#### 5.1 *Access and Investigation*

Between the date of this Agreement and the Closing Date, the Company will, and will cause its Representatives to, (a) afford the Buyer and its Representatives and their Representatives (collectively, the "Buyer's Advisors") reasonable access, after appropriate notice, to the Company's personnel, properties, contracts, books and records, and other documents and data, (b) furnish the Buyer and the Buyer's Advisors with copies of all such contracts, books and records, and other existing documents and data belonging to the Company as the Buyer may reasonably request, and (c) furnish the Buyer and the Buyer's Advisors with such additional financial, operating, and other data and information relating to the Company as the Buyer may reasonably request. To the extent practicable, the Buyer will so conduct its interviews with personnel as to minimize disruption and shall conduct its review off-site.

#### 5.2 *Operation of the Business of the Company*

- (a) Between the date of this Agreement and the Closing Date, the Company will conduct its business only in the Ordinary Course of Business, except as set forth in Schedule 5.2.
- (b) Without limiting the generality of the provisions of (a) above, the Company shall (absent the prior written consent of the Buyer and except as set forth in Schedule 5.2):
- (i) not issue any additional shares of capital stock of any class or redeem any outstanding shares of capital stock;
  - (ii) maintain the fixed assets essential to the Company's operations in good operating repair and condition, subject to normal wear and tear, and make repairs and replacements in accordance with prior practices;
  - (iii) report to the Buyer concerning operational matters of a material nature and otherwise report periodically to the Buyer concerning any material changes to status of the business, operations, and finances of the Company;
  - (iv) continue to pay and satisfy the Company's liabilities in the Ordinary Course of Business, paying such liabilities in accordance with prior practices;
  - (v) continue to maintain in full force and effect or renew or replace all policies of insurance now in effect which cover the assets of the Company and give all notices and present all material claims under all policies of insurance in due and timely fashion;



- (vi) not enter into any material leases or contracts for the purchase or sale of products, utilities, or services, except (A) those made in the Ordinary Course of Business or (B) those which may be canceled without liability upon not more than thirty (30) days' notice; or (C) with approval of the Buyer;
  - (vii) use Best Efforts to preserve the business organization and properties to be transferred hereunder intact, including present operations and relationships with lessors, licensors, customers and employees; use reasonable efforts to preserve for the Buyer the goodwill of the Company's employees, suppliers, customers, and other persons with whom the Company has business relations;
  - (viii) not enter into any contract, agreement, or understanding with any labor union or other association representing any employee; not enter into, amend, or terminate, fully or partially, any benefit plan; and not withdraw any funds from any benefit plan or trust or other funding arrangement maintained pursuant thereto;
  - (ix) except for annual merit increases awarded to non-officer employees in the Ordinary Course of Business consistent with past business practices not authorize or grant any wage or salary increase, otherwise directly or indirectly increase post Closing compensation to or for any employee, or agree in any manner to any such post Closing increase;
  - (x) not create or incur any indebtedness for borrowed money or assume directly or indirectly any debt, obligation, or liability (whether absolute or contingent, whether directly or as surety or guarantor, and whether or not currently due or payable) which will exist after the Closing Date, except in the Ordinary Course of Business consistent with past business practices and policies and as required for the operation of the Company;
  - (xi) not make any material change in the accounting methods, practices, policies, principles, or procedures of the Company, except as necessary to perform this Agreement, without consulting with the Buyer;
  - (xii) not enter into any lease, sublease, or contract, regarding the acquisition, leasing, or occupancy of any real estate, equipment, vehicles, or other items relating to the Company except in the Ordinary Course of Business or upon approval of the Buyer;
  - (xiii) not sell, convey, lease, abandon, or otherwise dispose of, or grant, suffer, or permit any lien or encumbrance upon, any of the Company's material assets, except on arm's length terms or in the Ordinary Course of Business;
  - (xiv) not enter into or modify in any manner any material Contract to which it is a party except in the Ordinary Course of Business, other than as contemplated in clause (viii) above; and
  - (xv) accrue and/or pay all withholding and other Taxes on a timely basis.
- (c) Notwithstanding the foregoing, nothing in this Agreement shall be construed to limit the right of the Company to take actions or engage in transactions which are consistent with the obligations under this Agreement. The parties contemplate that the Company may refinance its debt with respect to its Milton, Pennsylvania facility, and the parties shall cooperate with respect thereto.

### 5.3 Negative Covenant

Except as otherwise expressly permitted by this Agreement, between the date of this Agreement and the Closing Date, the Company will not take any affirmative action, or fail to take any common and reasonable action within their or its control, as a result of which any of the changes or events listed in Section 3.6 is likely to occur.



#### *5.4 Required Approvals*

As promptly as practicable after the date of this Agreement, the Company shall make all filings required by Legal Requirements to be made by them in order to consummate the Contemplated Transactions. Between the date of this Agreement and the Closing Date, the Company shall, (i) solicit the approval of its shareholders for the transactions contemplated by this Agreement, (ii) cooperate with the Buyer with respect to all filings that the Buyer elects to make or is required by Legal Requirements to make in connection with the Contemplated Transactions and (iii) cooperate with the Buyer in obtaining all consents identified in Schedule 4.2(c) or Schedule 3.2. The approvals required shall include, without limitation, approval of the Contemplated Transaction by Securities and Exchange Commission and all other governmental bodies so required pursuant to the Buyer's proxy filing, the shareholder approval of Buyer and approval by Petro (the "Petro Franchise Consents") of the Buyer as a Petro franchisee with respect to the Company's Milton, Breezewood and Frystown locations, without the payment of any fees to Petro other than as set forth in the Company's existing franchise agreements with Petro (the "Petro Franchise Agreements").

#### *5.5 Notification*

Between the date of this Agreement and the Closing Date, the Company will promptly notify the Buyer in writing if the Company becomes aware of any fact or condition that causes or constitutes a Breach of any of the Company's representations and warranties under this Agreement, or if the Company becomes aware of the occurrence after the date of this Agreement of any fact or condition that would (except as expressly contemplated by this Agreement) cause or constitute a Breach of any such representation or warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition. During the same period, the Company will promptly notify the Buyer of the occurrence of any Breach of any covenant of the Company in this Section 5 or of the occurrence of any event that is likely to make the satisfaction of the conditions in Section 7 impossible or unlikely.

#### *5.6 No Solicitation of Other Proposals; Ordinary Course Operations*

The Company hereby agrees that they will not directly or indirectly solicit, entertain or encourage inquiries or proposals, or enter into an agreement or negotiate with any other party, to sell, or enter into any merger or consolidation with respect to, the Business, the Company, a substantial portion of the Assets.

#### *5.7 Best Efforts*

Between the date of this Agreement and the Closing Date, the Company will use their Best Efforts to cause the conditions in Sections 7 and 8 to be satisfied.

### **ARTICLE VI. COVENANTS OF THE BUYER**

#### *6.1 Prior to Closing*

##### **(a) Approvals of Governmental Bodies**

As promptly as practicable after the date of this Agreement, the Buyer will, and will cause each of its Related Persons to, make all filings required by Legal Requirements to be made by them to consummate the Contemplated Transactions. Between the date of this Agreement and the Closing Date, the Buyer will, and will cause each Related Person to, cooperate with the Company and its shareholders with respect to all filings that the Company is required by Legal Requirements to make in connection with the Contemplated Transactions, and (ii) cooperate with the Company in obtaining all consents identified in Schedule 3.2; provided that this Agreement will not require the Buyer to dispose of or make any unreasonable change in any portion of its business or to incur any other unreasonable burden to obtain a Governmental Authorization.



(b) Best Efforts

Except as set forth in the proviso to Section 6.1, between the date of this Agreement and the Closing Date, the Buyer will use its Best Efforts to cause the conditions in Articles VII and VIII to be satisfied.

(c) Notification

The Buyer will notify the Company in writing promptly of (a) the occurrence of any Breach by the Buyer, (b) any Knowledge the Buyer may obtain of any Breach by the Company, and (c) the occurrence of any event known to the Buyer that is likely to make the satisfaction of the conditions in Sections 7 or 8 impossible or unlikely.

**ARTICLE VII. CONDITIONS PRECEDENT TO THE BUYER'S OBLIGATION TO CLOSE**

The Buyer's obligation to purchase the Assets and to take the other actions required to be taken by the Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by the Buyer, in whole or in part):

*7.1 Accuracy of Representations; Material Adverse Changes*

(a) All of the Company's representations and warranties in this Agreement must be accurate in all material respects (except in the case of those representations and warranties which are already qualified as to materiality, in which case such additional materiality qualifier shall not apply) as of the Closing Date as if made on the Closing Date, or, if inaccurate, must not have a Material Adverse Effect on the Company's business, finances or operations taken as a whole following Closing.

(b) Between the date hereof and the Closing Date, there shall not have occurred any change in the assets, liabilities, business, financial condition, operations, or results of operations of the Company which would have a Material Adverse Effect on the Company's business, finances or operations taken as a whole following Closing.

*7.2 The Company's Performance*

(a) All of the covenants and obligations that the Company is required to perform or to comply with pursuant to this Agreement at or prior to the Closing must have been duly performed and complied with in all material respects.

(b) Each document required to be delivered by the Company pursuant to Section 2.4(a) must have been delivered.

*7.3 Consents*

Each of the Consents identified in Schedule 3.2 or Schedule 4.2(c) must have been obtained and must be in full force and effect, including, but not limited to, the Petro Franchise Consents.

*7.4 No Proceedings*

Since the date of this Agreement, there must not have been commenced or Threatened against the Buyer, or against any Person affiliated with the Buyer, any Proceeding (a) involving any material challenge to, or seeking damages or other relief in connection with, any of the Contemplated Transactions, or (b) that would have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the Contemplated Transactions.

*7.5 No Claim Regarding Stock Ownership or Sale Proceeds*

There must not have been made or Threatened by any Person any claim (which is not or cannot be settled or dismissed prior to closing) asserting that such Person (a) is the holder or the beneficial owner of, or has the right to acquire or to obtain beneficial ownership of, any stock of, or any other voting, equity, or ownership interest in, any of the Company, or (b) is entitled to all or any portion of the Purchase Price payable for the Assets.

A-22

---



*7.6 Shareholder Approval*

The shareholders of the Buyer shall have approved this Agreement and the transactions contemplated hereby.

**ARTICLE VIII. CONDITIONS PRECEDENT TO THE COMPANY'S OBLIGATION TO CLOSE**

The Company's obligation to sell the Assets and to take the other actions required to be taken by the Company at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by the Company, in whole or in part):

*8.1 Accuracy of Representations; Material Adverse Changes*

(a) All of the Buyer's representations and warranties in this Agreement must be accurate in all material respects as of the Closing Date as if made on the Closing Date or, if inaccurate, must not have a Material Adverse Effect on the Company.

(b) Between the date hereof and the Closing Date, there shall not have occurred any change in the assets, liabilities, business, financial condition, operations, or results of operations of the Buyer which would have a Material Adverse Effect on the Buyer's business, finances or operations taken as a whole following Closing.

*8.2 The Buyer's Performance*

(a) All of the covenants and obligations that the Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing must have been performed and complied with in all material respects.

(b) The Buyer must have delivered each of the documents required to be delivered by the Buyer pursuant to Section 2.4(b) and must deliver the Able Shares to the the Company.

*8.3 Consents*

Each of the Consents identified in Schedule 3.2 or Schedule 4.2(c) must have been obtained and must be in full force and effect, including, but not limited to, the Petro Franchise Consents.

*8.4 No Injunction*

There must not be in effect any Legal Requirement or any injunction or other Order that (a) prohibits the sale of the Assets by the Company to the Buyer, and (b) has been adopted or issued, or has otherwise become effective, since the date of this Agreement.

**ARTICLE IX. TERMINATION**

*9.1 Termination Events*

This Agreement may by notice be terminated:

(a) by either the Buyer or the Company if a material Breach of any representation, warranty or obligation contained in this Agreement has been committed by the other party and such Breach has not been waived or, to the extent the Breach is of the nature which can be cured, not cured within thirty (30) days of written notice of such Breach by the other parties;



(b) (i) by the Buyer if any of the conditions in Section 7 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of the Buyer to comply with its obligations under this Agreement) and the Buyer has not waived such condition on or before the Closing Date; or (ii) by the Company, if any of the conditions in Section 8 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of the Company to comply with their obligations under this Agreement) and the Company has not waived such condition on or before the Closing Date; or

(c) by mutual consent of the Buyer and the Company.

A party seeking to exercise the rights provided in Section 9.1(a) shall so notify the other party within fifteen (15) days after obtaining Knowledge of the facts, events or circumstances giving rise to the right to terminate, but no later than the Closing Date. In any other case provided for in this Section 9.1, termination may be effected by written notice to the other parties before or at Closing.

### *9.2 Effect of Termination; Liquidated Damages*

If this Agreement is terminated pursuant to Section 9.1(a) or 9.1(b) as a result of a Breach (it being understood that a failure of a condition shall not be considered a Breach unless it is caused by a party's breach of its representations and warranties, or other obligations, under this Agreement), this Agreement will terminate, except that sections 12.1 and 12.3 will survive.

## **ARTICLE X. INDEMNIFICATION; REMEDIES**

### *10.1 Survival*

All representations, warranties, covenants, and obligations in this Agreement will survive the Closing, provided that all representations and warranties of the parties shall expire two (2) years after the Closing, relating to title to the Assets, which shall survive indefinitely, Section 3.9, relating to environmental matters, which shall survive for three (3) years, and Section 3.10, relating to taxes, which shall survive until expiration of the applicable statute of limitations), subject to the provisions of Sections 10.4 and 10.5. Neither party shall have any right to indemnification, payment of Damages or other remedy after the Closing based on any inaccuracy or breach of such representations, warranties, covenants, or obligations of which the injured party had any knowledge before the Closing Date, the injured party's sole remedy in such case being to terminate this Agreement and to decline to close pursuant to Section 9.1(a) and, if applicable, to receive the compensation as described in Section 9(2). The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will bar any right to indemnification, payment of Damages, or other remedy based on such representations, warranties, covenants, and obligations.

### *10.2 Indemnification and Payment of Damages by the Company*

Subject to the limitations of Sections 10.1, 10.4 and 10.5, if the Closing has occurred, the Company will indemnify and hold harmless the Buyer and its officers, directors, affiliates or agents (collectively, the "Indemnified Persons") for, and will pay to the Indemnified Persons the amount of, any loss, liability, claim, damage (including incidental and consequential damages), expense (including costs of investigation and defense and reasonable, documented attorneys' fees of outside counsel) whether or not involving a third-party claim (collectively, "Damages"), arising, directly or indirectly, from or in connection with: (a) any Breach of any representation, warranty, covenant or obligation of the Company in this Agreement; or (b) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by any such Person with or the Company (or any Person acting on their behalf) in connection with any of the Contemplated Transactions.

10.3 *Indemnification and Payment of Damages by the Buyer*

Subject to the limitations of Sections 10.1, 10.4 and 10.5, the Buyer will indemnify and hold harmless the Company and its successors and assigns, and will pay to the Company, and its successors and assigns, the amount of any Damages arising, directly or indirectly, from or in connection with (a) any Breach of any representation, warranty, covenant or obligation of the Buyer in this Agreement, or in any certificate delivered by the Buyer pursuant to this Agreement, or (b) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by such Person with the Buyer (or any Person acting on its behalf) in connection with any of the Contemplated Transactions.

A-24

---

#### 10.4 *Limitations*

If the Closing occurs, the Company will have no liability (for indemnification or otherwise) with respect to any representation or warranty, unless on or before the date which is two years from the Closing Date (or, in the case of Section 3.9, three years from the Closing Date), the Buyer notifies the Company of a claim specifying the factual basis of that claim in reasonable detail to the extent then known by the Buyer. A claim pursuant to Section 3.10, shall be made no more than six (6) months after the Buyer obtains Knowledge of the same, but in no event after the expiration of the applicable statute of limitations. Any claims made pursuant to this Section 10.4 shall be deemed a “Claim”.

#### 10.5 *Limitations on Amount — the Company*

- (a) The Company will have no liability (for indemnification or otherwise) with respect to the matters described in Section 10.2 until the total of all Damages with respect to such matters exceeds 1% of the Purchase Price and then only for the amount by which such Damages exceed such amount.
- (b) Notwithstanding any other provision of this Agreement or any other document, the maximum aggregate liability of the Company under this Agreement shall be fifty percent (50%) of the cash equivalent amount of the Purchase Price.
- (c) The Company’s liability hereunder shall be further reduced to the extent (i) the loss, event, liability or matter giving rise thereto is covered by insurance maintained or required to be maintained by the Company or the Buyer; (ii) the loss, event, liability or matter giving rise thereto is reimbursable through government programs, including but not limited to Underground Storage Tank Indemnification Fund; and (iii) the loss, event, liability or matter giving rise thereto provides the Buyer or the Company with any reduction in taxes or other operating costs or any other economic benefit.

#### 10.6 *Limitations on Amount—The Buyer*

- (a) The Buyer will have no liability (for indemnification or otherwise) with respect to the matters described in clause of Section 10.3 until the total of all Damages with respect to such matters exceeds 1% of the Purchase Price, and then only for the amount by which such Damages exceed such amount. However, this Section 10.6 will not apply to any claim against the Buyer based on failure to pay the Purchase Price.
- (b) The maximum liability of the Buyer under this Section 10.6 shall be fifty percent (50%) of the amount of the Purchase Price paid by the Buyer.

#### 10.7 *Procedure for Indemnification—Third Party Claims*

- (a) Promptly after receipt by a party of notice of the commencement of any Proceeding against it against which that party is entitled to indemnity under Sections 10.2 or 10.3, such indemnified party will, if it intends to make a claim against an indemnifying party under such Section, give notice to the indemnifying party of the commencement of such claim within 30 (thirty) days of receipt of notice, but the failure to notify the indemnifying party will not relieve the indemnifying party of any liability that it may have to any indemnified party, except to the extent that the indemnifying party demonstrates that the defense of such action is prejudiced by the indemnifying party's failure to give such notice. The indemnified party shall keep the indemnifying party informed with respect to any significant developments with respect to such Proceeding, answer any questions the indemnifying party or its or their representatives may have from time to time with respect thereto and give all reasonable cooperation to the indemnifying necessary to investigate and defend such Proceeding.



(b) If any Proceeding referred to in subsection (a) of this Section is brought against an indemnified party and it gives notice to the indemnifying party of the commencement of such Proceeding, the indemnifying party will be entitled to participate in such Proceeding and, to the extent that it wishes (unless (i) the indemnifying party is also a party to such Proceeding and the indemnified party determines in good faith that joint representation would be inappropriate, or (ii) the indemnifying party fails to provide reasonable assurance to the indemnified party of its financial capacity to defend such Proceeding and provide indemnification with respect to such Proceeding), to assume the defense of such Proceeding with counsel reasonably satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such Proceeding, the indemnifying party will not, as long as it diligently conducts such defense, be liable to the indemnified party for any fees of other counsel or any other expenses with respect to the defense of such Proceeding, in each case subsequently incurred by the indemnified party in connection with the defense of such Proceeding, other than reasonable costs of investigation. The indemnifying party may, however, assume the defense of a Proceeding while reserving expressly all rights to deny that the claims made in that Proceeding are within the scope of and subject to indemnification in which case (i) the indemnified party may participate in the defense thereof, at the expense of the indemnifying party using counsel of the indemnified party's choosing, (ii) no compromise or settlement of such claims may be effected by the indemnifying party without the indemnified party's consent unless (A) there is no finding or admission of any violation of Legal Requirements or any violation of the rights of any Person and no effect on any other claims that may be made against the indemnified party, and (B) the sole relief provided is monetary damages that are paid in full by the indemnifying party; and (iii) the indemnified party will have no liability with respect to any compromise or settlement of such claims effected without its consent. If notice is given to an indemnifying party of the commencement of any Proceeding and the indemnifying party does not, within ten days after the indemnified party's notice is given, give notice to the indemnified party of its election to assume the defense of such Proceeding, the indemnifying party will be bound by any determination made in such Proceeding or any compromise or settlement effected by the indemnified party.

(c) Notwithstanding the foregoing, if an indemnified party determines in good faith that there is a reasonable probability that a Proceeding may adversely affect it or its affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the indemnified party may, by notice to the indemnifying party, assume the exclusive right to defend, compromise, or settle such Proceeding, but the indemnifying party will not be bound by any determination of a Proceeding so defended or any compromise or settlement effected without its consent.

(d) Section 12.5 hereof shall govern jurisdiction over disputes under this Article X.

#### 10.8 *Procedure for Indemnification—Other Claims*

A claim for indemnification for any matter not involving a third-party claim may be asserted by notice to the party from whom indemnification is sought.

#### 10.9 *Exclusive Remedy*

If Closing occurs, a claim for Indemnifiable Damages pursuant to this Article shall be the indemnified party's sole and exclusive remedy with respect to any Breach of representation or warranty, or covenant in this Agreement, or any other Transaction Document regardless whether such claim arises in contract, tort, breach of warranty or any other legal or equitable theory; provided that the rights and limitations of this Article X shall not apply to any claim for failure to pay the Purchase Price or for breach of any affirmative or negative covenant under this or any other agreement related hereto that occurs after Closing, and the parties shall retain all rights and remedies available hereunder or under applicable law for such breach, subject to any express limits on such remedies contained in the applicable agreement. The Buyer shall be entitled to exercise its rights of set-off set forth in Section 10.7 with respect thereto as provided in that section.





## ARTICLE XI. POST-CLOSING COVENANTS

### 11.1 *Cooperation*

The parties will cooperate with and provide such further assurances to each other as are reasonably necessary or requested to perfect (of record or otherwise) and, to the extent possible, effectively vest the Buyer's title to the Assets, aid in the prosecution, defense, or other action regarding litigation of any rights arising from or affecting title to the Assets, and assist in making a smooth transition in ownership of the Assets from the Company to the Buyer at each party's own expense. The Company, upon reasonable notice, shall be permitted to have access to the records transferred to the Buyer as provided in this Agreement at no charge to the Company.

### 11.2 *Treatment of Confidential Information*

(a) The Company acknowledges that it may have had in the past, and in the future may have, access to confidential information of the Company and the Buyer. The Company agrees that it will keep confidential all such confidential information and, except with the specific prior written consent of the Buyer, will not disclose such confidential information to any person except; (i) representatives of the Buyer, or (ii) its own representatives, provided that such representatives (other than counsel) agree to the confidentiality provisions of this Section. Confidential information shall not include (A) such information that becomes known to the public generally through no fault of the Company, (B) information required to be disclosed by the terms of this Agreement or by law or the order of any governmental authority under color of law, provided that prior to disclosing any information pursuant to this clause (B), the Company shall, if possible, give prior written notice thereof to the Buyer and provide the Buyer with the opportunity to contest such disclosure, or (C) such information that the disclosing party reasonably believes is required to be disclosed in connection with the defense of a lawsuit against the disclosing party. Because of the difficulty of measuring the economic loss that may be incurred as a result of the breach of the covenants above, and because of the immediate and irreparable damage that would be caused for which the injured party would have no other adequate remedy, the Company agrees that the Buyer and/or the Company may enforce the provisions of this section by injunctions and restraining orders against any of them who breaches any of these provisions. Nothing herein shall be construed as prohibiting the Buyer from pursuing any other remedy available at law or in equity for such breach or threatened breach, including the recovery of damages, subject to the limitations of Article 10. The Company understands and acknowledges that certain of its shareholders may have during the course of negotiating the transactions contemplated by this Agreement, acquired confidential information of the Buyer, and the Company agrees to use its best efforts to cause such shareholders to sign confidentiality agreements in favor of the Buyer in a manner no less restrictive as set forth in this Agreement.

(b) Because of the difficulty of measuring the economic loss that may be incurred as a result of the breach of the covenant above, and because of the immediate and irreparable damage that would be caused for which the injured party would have no other adequate remedy, the Buyer agrees that the Company may enforce the provisions of this section by specific performance.

(c) The obligations of the parties under this Section 11.2 shall survive the termination of this Agreement.

### 11.3 *Preparation of Tax Returns*

The Company agree to prepare and execute applicable tax returns for the Company for any interim or stub period. The Buyer agrees not to amend or otherwise change any tax return for any period ending prior to the Closing Date, or otherwise make any election or similar accounting method change that would have the effect of retroactively increasing the Company's tax liability without obtaining prior written consent from the Company.

### 11.4 *Employment Arrangements*

(a) From and after the Closing Date, the Buyer shall use its Best Efforts to retain a majority of the present full-time employees of the Company at such employee's current position (or, if offered to, and accepted by an employee, a position for which the employee is qualified with the Buyer or a Subsidiary of the Buyer at a salary commensurate with the position), and pay compensation to each person who was employed as of the Closing Date and who continues to be employed by the Company on or after the Closing Date, that is at least equal to the aggregate compensation that such person was receiving from the Company prior to the Closing Date.

A-27

---

(b) For vesting and eligibility purposes for employee benefits under each Company Benefit Plan and/or any employee benefit plan established by the Buyer after the Closing Date, employees and/or directors, former employees and directors, if applicable, of the Company shall receive credit for years of service with the Company.

#### 11.5 *No Section 338 Election*

The Buyer shall not make an election under Section 338(h)(10) of the Internal Revenue Code of 1986, as amended, or any applicable analogous provision of state or local law, in connection with the Contemplated Transactions.

### **ARTICLE XII. GENERAL PROVISIONS**

#### 12.1 *Expenses*

Except as otherwise expressly provided in this Agreement each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of agents, representatives, counsel, and accountants. For purposes of the foregoing, the Company's expenses shall include only those expenses incurred by Sellers after March 30, 2005. In the event of termination of this Agreement, the obligation of each party to pay its own expenses will be subject to any rights of such party expressly provided herein arising from a breach of this Agreement by another party.

#### 12.2 *Public Announcements; Filings*

Any public announcement or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued at such time and in such manner as the Buyer determines based upon the Buyer's requirements as a publicly traded Company. Unless consented to by the Buyer and the Company in advance, the Company and the Buyer shall keep this Agreement strictly confidential and may not make any disclosure of this Agreement to any Person. The Company and the Buyer will consult with each other concerning the means by which the Company's employees, customers, and suppliers and others having dealings with the Company will be informed of the Contemplated Transactions.

#### 12.3 *Confidentiality*

(a) Except as otherwise contemplated by this Agreement, between the date of this Agreement and the Closing Date, the Buyer and the Company will maintain in confidence, and will cause the directors, officers, employees, agents, and advisors of the Buyer and the Company to maintain in confidence any written, oral, or other information obtained in confidence from another party or the Company in connection with this Agreement or the Contemplated Transactions, unless (i) such information is already known to such party or to others not bound by a duty of confidentiality or such information becomes publicly available through no fault of such party, (ii) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the Contemplated Transactions, or (iii) the furnishing or use of such information is required by or necessary or appropriate in connection with legal proceedings.

(b) If the Contemplated Transactions are not consummated, each party will return or destroy as much of such written information as the other party may reasonably request.

#### 12.4 *Notices*

All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by telecopier (with written confirmation of receipt), provided that a copy is mailed by registered mail, return receipt

requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

A-28

---

The Company: All American Plazas, Inc.  
1267 Hilltop Lane  
Myerstown, PA 17067  
Attn: Richard Mitstifer  
Facsimile No.: 717-933-5184

With a copy to:

Jonathan Austern, Esquire  
Austern & Austern LLC  
Facsimile No.: (631) 929-4543

The Buyer: Christopher Westad  
Able Energy, Inc.  
198 Green Pond Road  
Rockaway, NJ 07866  
Facsimile No.: (973) 586-9866

With a copy to:

Ferber Frost Chan & Essner, LLP  
530 Fifth Avenue  
New York, NY 10036-5101  
Attention: Gregory D. Frost, Esquire  
Facsimile No.: 212-944-7630

### 12.5 *Jurisdiction; Service of Process*

Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in any court of the Commonwealth of Pennsylvania or State of New Jersey, having jurisdiction, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

### 12.6 *Further Assurances*

The parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

### 12.7 *Waiver*

Subject to the limits set forth herein, (a) the rights and remedies of the parties to this Agreement are cumulative and not alternative, (b) neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (x) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (y) no waiver that may be given by a party will be applicable except in the

specific instance for which it is given; and (z) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

A-29

---

### 12.8 *Entire Agreement and Modification*

This Agreement supersedes all prior oral and written communications, information, disclosures, bid documents, and agreements between the parties with respect to its subject matter (including memoranda, draft term sheets and correspondence relating thereto) and constitutes (along with the Transaction Documents) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the party to be charged with the amendment.

### 12.9 *Schedules*

In the event of any inconsistency between the statements in the body of this Agreement and those in the Schedules, the statements in the Schedule will control.

### 12.10 *Assignments, Successors, and No Third-Party Rights*

Neither party may assign any of its rights under this Agreement without the prior consent of the other parties except that the Buyer may assign any of its rights under this Agreement to any Subsidiary of the Buyer. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the heirs, personal representatives, successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement (or their heirs, personal representatives, successors and permitted assigns) any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their heirs, personal representatives, successors and assigns.

### 12.11 *Severability*

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

### 12.12 *Section Headings, Construction*

The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to “Section” or “Sections” refer to the corresponding Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word “including” does not limit the preceding words or terms.

### 12.13 *Time of Essence*

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

### 12.14 *Governing Law*

This Agreement will be governed by the laws of the State of New York without regard to conflicts of laws principles.

12.15 *Counterparts*

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

[Signature Page Follows]

A-31

---



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

Attest                      All American Plazas, Inc.

By: \_\_\_\_\_ By: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: Richard Mitstifer  
Title: Secretary                      Title: President

Able Energy, Inc.

By: \_\_\_\_\_  
Name: Chris Westad  
Title: President

A-32

---

TABLE OF APPENDICES, EXHIBITS AND SCHEDULES

Appendix A	Definitions
Appendix B	The Properties
Exhibit 2.2(4)	Leases
Exhibit 2.2(b)	Escrow Agreement
Exhibit 2.2(c)	Form of Note
Exhibit 2.2(d)	Forms of Mortgages and Guaranty
Schedule A	Stockholder Percentage Ownership of the Company prior to Closing
Schedule 2.1	The Assets
Schedule 3.1	Foreign Qualifications
Schedule 3.2	Authority/No Conflict; Required Notices and Consents
Schedule 3.3	Subsidiaries and Capitalization
Schedule 3.6	Absence of Certain Changes and Events
Schedule 3.8	Liabilities/Obligations
Schedule 3.9	Environmental Matters
Schedule 3.10	Taxes
Schedule 3.11	List of Employees
Schedule 3.12	Employee Benefit Plans
Schedule 3.13	Labor and Employment Agreements
Schedule 3.14	Compliance with Legal Requirements, Governmental Authorizations
Schedule 3.15	Legal Proceedings; Orders
Schedule 3.16(a)	List of Contracts
Schedule 3.16(b)	Contract Liabilities and Restrictions
Schedule 3.16(c)	Exceptions to Enforceability of Contracts
Schedule 3.16(d)	Contract Defaults
Schedule 3.17(b)	Self Insurance
Schedule 3.17(c)	Insurance Policy Information
Schedule 3.18	Title to and Condition of Assets
Schedule 3.19(b)	List of Contracts Relating to the Intellectual Property Assets
Schedule 3.19(c)	Employee Assignments of Intellectual Property
Schedule 3.19(d)	List of Trademarks
Schedule 3.20	Certain Payments
Schedule 3.21	Related Party Transactions
Schedule 4.2(b)	No Conflict
Schedule 4.2(c)	Consents

Schedule 4.6 Liabilities

Schedule 4.7 Taxes

Schedule 4.8 Legal Requirements

A-33

---

Appendix A

Definitions

“Able Shares” - as defined in Section 2.1(1).

“Agreement” - as defined in the first paragraph of this Agreement.

“Affiliate”--an *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

“Applicable Contract”--any Contract (a) under which the Company has or may acquire any rights, (b) under which the Company has or may become subject to any obligation or liability, or (c) by which the Company or any of the assets owned or used by it is or may become bound.

“Assets” - as defined in Section 2.1.

“Best Efforts”--the efforts that a prudent and commercially reasonable Person desirous of achieving a result would use in similar circumstances to ensure that such result is achieved as expeditiously as possible; provided, however, that an obligation to use Best Efforts under this Agreement does not require the Person subject to that obligation to take actions that would result in a Materially Adverse Effect on the benefits to such Person of this Agreement and the Contemplated Transactions, or would otherwise cause a Material Adverse Effect on such Person.

“Breach”--a "Breach" of a representation, warranty, covenant, obligation, or other provision of this Agreement or any Transaction Document will be deemed to have occurred if there is or has been any inaccuracy in or breach of, or any failure to perform or comply with, such representation, warranty, covenant, obligation, or other provision, and the term "Breach" means any such inaccuracy, breach, failure, claim, occurrence, or circumstance.

“Business”--as defined in the Recitals to this Agreement.

“Buyer”--as defined in the first paragraph of this Agreement.

“Buyer’s Advisors” -- as defined in Section 5.1.

“Claim”--as defined in Section 10.4

“Closing”--as defined in Section 2.3.

“Closing Certificates”--the certificates delivered at Closing pursuant to Sections 2.4(a)(iii) and 2.4(b)(iii).

“Closing Date”--the date and time as of which the Closing actually takes place.

“Company”--as defined in the first paragraph of this Agreement.

“Company Benefit Plans”--as defined in Section 3.12.

“Company Closing Document” - as defined in Section 3.2(a).

“Company Pension Plan” - as defined in Section 3.12.

“Company Releases”--as defined in Section 4.2(a).

“Consent”--any approval, consent, ratification, waiver, or other authorization (including any Governmental Authorization).

“Contemplated Transactions”--all of the transactions contemplated by this Agreement, including:

A-34

---

(a) the sale of the Assets by the Company to the Buyer;

(b) the execution and delivery of the Transaction Documents.

“Contract”--any agreement, contract, obligation, promise, or undertaking (whether written or oral ) for the breach of which the law gives a remedy.

“Damages”--as defined in Section 10.2.

“Employee Pension Benefit Plan” - as defined in Section 3.12(a).

“Employee Welfare Benefit Plan” - see Section 3.12(a).

“Employment Obligation” - as defined in Section 3.13.

“Encumbrance”--any charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

“ERISA”--as defined in Section 3.12.

“Financing” - as defined in Section 2.2(3).

“GAAP”--generally accepted United States accounting principles, applied on a basis consistent with the basis on which the Balance Sheet and the other financial statements referred to in Section 3.4(b) were prepared.

“Governmental Authorization”--any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

“Governmental Body”--any:

(a) federal, state, local, municipal or other government within the United States; or

(b) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature within the United States.

“Indemnified Persons” - as defined in Section 10.2.

“Intellectual Property Assets” --as defined in Section 3.19.

“Interim Balance Sheet”--as defined in Section 3.4.

“IRC”--the Internal Revenue Code of 1986 or any successor law, and regulations issued by the IRS pursuant to the Internal Revenue Code or any successor law.

“IRS”--the United States Internal Revenue Service or any successor agency, and, to the extent relevant, the United States Department of the Treasury.

“Knowledge”--an individual will be deemed to have "Knowledge" of a particular fact or other matter if such individual is actually aware of such fact or other matter. A Person (other than an individual) will be deemed to have "Knowledge" of a particular fact or other matter if any individual who is serving, or who has at any time served, as a director, senior executive, officer, partner, executor, or trustee of such Person (or in any similar capacity) has, or at any time had, actual knowledge of such fact or other matter.

“Leases” - as defined in Section 2.2(4).

A-35

---

“Legal Requirement”--any federal, state, local, municipal, or other administrative order, constitution, law, ordinance, principle of common law, regulation or statute of the United States or its Governmental Bodies.

“Marks” - as defined in Section 3.19(a)(i).

“Material Adverse Effect” - a material adverse effect on the business, operations, properties, assets or financial condition of a Person (and its subsidiaries, if applicable), taken as a whole.

“Noncompetition Agreement”--as defined in Section 5.7.

“Order”--any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Body or by any arbitrator.

“Ordinary Course of Business”--an action taken by a Person will be deemed to have been taken in the "Ordinary Course of Business" unless:

(a) such action is required to be authorized by the board of directors of such Person (or by any Person or group of Persons exercising similar authority) and is required to be specifically authorized by the parent company (if any) of such Person; or

(b) (i) such action is materially inconsistent with the past practices of such Person and is not taken in the normal day-to-day operations of such Person; and

(ii) such action is not similar in nature and magnitude to actions customarily taken, without any authorization by the board of directors (or by any Person or

group of Persons exercising similar authority), in the normal day-to-day operations of other Persons that are in the same line of business as such Person.

“Organizational Documents”--(a) the articles or certificate of incorporation and the bylaws of a corporation; (b) the partnership agreement and any statement of partnership of a general partnership; (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (d) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person; and (e) any amendment to any of the foregoing.

“Person”--any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Body.

“Petro Franchise Agreements”--as defined in Section 5.4.

“Petro Franchise Consents”--as defined in Section 5.4.

“Proceeding”--any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

“Properties” -- shall mean the real property interests of the Company described in Appendix B attached hereto.

“Property Equity Interests” -- shall mean the dollar amount representing the collective equity interests of the Properties as calculated by aggregate the appraised value of the the Properties (as determined in the appraisals delivered to the



Buyer prior to the Closing and deducting the aggregate amount of all debt, mortgages, liens (except for statutory or mechanic's liens), judgments or other encumbrances against any of the Properties.

“Purchase Price” -- as defined in Section 2.2.

“Property Debt Payments” - as defined in Section 2.2(4).

“Proprietary Rights Agreement” - as defined in Section 3.11 (b).

A-36

---

"Representative"--with respect to a particular Person, any director, officer, employee, agent, consultant, advisor, lender, or other representative of such Person, including legal counsel, accountants, and financial advisors.

"Schedule"--the schedules delivered by the Company to the Buyer concurrently with the execution and delivery of this Agreement.

"SEC"--the Securities and Exchange Commission.

"Securities Act"--the Securities Act of 1933 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

"Subsidiary"--with respect to any Person (the "Owner"), any corporation or other Person of which securities or other interests having the power to elect a majority of that corporation's or other Person's board of directors or similar governing body, or otherwise having the power to direct the business and policies of that corporation or other Person (other than securities or other interests having such power only upon the happening of a contingency that has not occurred) are held by the Owner or one or more of its Subsidiaries; when used without reference to a particular Person, "Subsidiary" means a Subsidiary of the Company.

"Tax Return"--any return (including any information return), report, statement, schedule, notice, form, or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection, or payment of any Tax or in connection with the administration, implementation, or enforcement of or compliance with any Legal Requirement relating to any Tax.

"Threatened"--a claim, Proceeding, dispute, action, or other matter will be deemed to have been "Threatened" if any demand or statement has been made (orally or in writing) or any notice has been given (orally or in writing), or if any other event has occurred or any other circumstances exist, that would lead a prudent Person to conclude that such a claim, Proceeding, dispute, action, or other matter is likely to be asserted, commenced, taken, or otherwise pursued in the future.

"Trade Secrets" - as defined in Section 3.19(a)(ii).

"Transaction Documents"--This Agreement, the Closing Certificates and any other contracts or certificates signed by the parties to effectuate the Contemplated Transactions.

Appendix B

The Properties

A-38

---

SCHEDULE A

---

<u>Stockholder</u>	<u>Percentage Ownership</u>
--------------------	-----------------------------

Chelednik Family Trust	84.85%
Gregory D. Frost	0.10%
Crystal Heights, L.L.C.	15.05%

A-39

---

**ANNEX B**

**UNAUDITED AND AUDITED FINANCIALS**

---

All American Plazas, Inc  
Condensed Consolidated Unaudited Financial Statements  
As of March 31, 2006

**Interim Balance Sheet**  
**Assets**

	March 31, 2006	March 31, 2005
Cash and Cash Equivalents	3,603,095	2,495,243
Accounts receivable	3,248,654	2,307,651
Inventory	2,963,820	2,667,996
Prepaid expenses	373,283	650,949
Deferred Income Taxes	193,100	-
Other current assets	90,256	71,567
Total Current Assets	10,472,209	8,193,407
Property & Equipment		
Land	25,418,543	15,032,909
Buildings	10,464,509	8,462,950
Equipment	3,212,871	1,119,161
Furniture & Fixtures	721,924	140,048
Vehicles	233,079	118,077
Leasehold Improvements	1,191,289	1,191,289
Land Improvements	4,755,494	2,226,690
Construction In Progress	397,209	592,989
Assets held for sale	763,825	949,924
	47,158,743	29,833,937
Depreciation and Amortization	(3,995,729)	(2,449,595)
Total Property and Equipment, Net	43,163,014	27,384,342
Restricted Cash	75,000.00	75,000
Other Assets net of amortization	1,258,469	1,237,297
Loans and Notes Receivable	11,908,762	4,927,564
Investment in Able Energy, Inc.	5,659,050	7,738,968
Total Assets	72,536,504	49,556,578

(B-I)

All American Plazas, Inc  
Condensed Consolidated Unaudited Financial Statements  
As of March 31, 2006

**Liabilities and Stockholders Equity**

	<b>March 31, 2006</b>	<b>March 31, 2005</b>
Current portion of long-term debt	46,437,240	4,339,383
Accounts Payable	11,730,422	11,557,507
Accrued Liabilities	1,653,786	1,405,985
Current Liabilities	<b>59,821,448</b>	<b>17,302,875</b>
Long term liabilities, less current	<b>6,796,641</b>	<b>18,044,675</b>
Deferred Income Taxes	<b>5,214,100</b>	<b>5,826,000</b>
Stockholders Equity & Retained Earnings		
Capital Stock, Class A Common	<b>2,548,516</b>	<b>2,548,516</b>
Capital Stock, Class B Common	<b>63,200</b>	<b>63,200</b>
Contribution in Excess of Par	<b>8,585,556</b>	<b>8,585,556</b>
Retained Earnings	<b>(10,492,957)</b>	<b>(414,244)</b>
Total Liabilities and Stockholder Equity	<b>72,536,504</b>	<b>51,956,578</b>

(B-I)

All American Plazas, Inc  
Condensed Consolidated Unaudited Financial Statements  
Six Months Ended March 31, 2006

**Interim Statement of Operations**

	<b>March 31, 2006</b>	<b>March 31, 2005</b>
Net Sales	83,865,566	68,089,822
Cost of sales	(75,796,802)	(59,698,078)
Gross Profit	8,068,764	8,391,744
Other Operating Income (expenses)		-
Operating Expenses	(8,591,653)	(8,247,751)
General and administrative expenses	1,511,523	(817,781)
Other operating income	653,334.99	721,288
Total other operating Income (Expenses)	(9,449,840)	(8,344,244)
Income from Operations	(1,381,077)	47,500
Other Income (expenses)		-
Interest Expense	(2,251,009.27)	(909,659)
Other Income	6,777.32	17,429
Interest Income	699,329	-
Rental Income	149,127.64	133,752
-		
Gain (Loss) on Investment in Able Energy	(1,263,318)	283,963
Net loss before Income Taxes	(4,040,171)	(472,010)

(B-I)



## **Abbreviated Notes to Interim Financial Statements for the Six Months Ended March 31, 2006**

### **Note 1 - Nature of Business**

All American Plazas, Inc. (the "Company") operates five full service travel plazas engaged in the retail sale of liquid fuels, truck service, sale of general merchandise, restaurant operations and lodging. The Company also operates three convenience stores and self-service fuel facilities. The Company offers standardized and consistent products and services to accommodate the varied needs of professional truck drivers and other motorists. Generally, these include separate gas and diesel fueling islands, truck maintenance and repair services, certified truck weighing scales, restaurants and travel and convenience stores offering an array of merchandise to cater to professional truck drivers and other motorists. The Company operates its facilities in Pennsylvania and Virginia. A significant portion of the Company's sales and receivables are with companies in the trucking industry. The Company has aggregated its services into one reportable operating segment based on the distribution of products and services under one common site facility.

### **Note 2 - Significant Accounting Policies**

#### **Basis of Consolidation**

The accompanying consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries, AAP Delaware, Inc., AAP Management, Inc, Harrisburg Gables Properties, Inc., Frystown Gables Properties, Inc., Carlyle Gables Properties, Inc., Carlyle Soco Properties, Inc., Doswell Properties, Inc., All American Realty and Construction, Inc. and All American Plazas of Strattanville, Inc. All significant intercompany balances and transactions have been eliminated in consolidation.

#### **Cash and Cash Equivalents**

For purposes of reporting cash flows, the Company considers all highly liquid debt instruments with a maturity of three months or less to be cash equivalents.

#### **Accounts Receivable**

Trade receivables are stated at outstanding balances, less an allowance for doubtful accounts. The allowance for doubtful accounts is established through provisions charged against income. Accounts deemed to be uncollectible are charged against the allowance and subsequent recoveries, if any, are credited to the allowance. The allowance for doubtful accounts is maintained at a level considered adequate to provide for losses that can be reasonably anticipated. Management's periodic evaluation of the adequacy of the allowance is based on past experience, agings of the receivables, adverse situations that may affect a customer's ability to pay, current economic conditions and other relevant factors. This evaluation is inherently subjective as it requires estimates that may be susceptible to significant change.

#### **Inventories**

Store groceries and merchandise inventory are stated at the lower of cost (determined on retail less markup basis) or market and all other inventories are stated at the lower of cost (determined on an average cost or first-in, first-out basis) or market. Inventories consist of liquid fuels, groceries, general merchandise and truck repair parts and tires. There were no significant changes in the inventories during the periods disclosed

#### **Franchises**

The franchise fees are amortized on a straight-line basis over 5 to 20 years, the terms of the related agreements

(B-I)

4

---

**Note 2 - Significant Accounting Policies (Continued)****Deferred Financing Costs**

Deferred financing costs represent loan closing costs incurred by the Company to obtain financing. These costs are being amortized on a straight-line basis over the term of the corresponding loan.

**Property and Equipment**

Property and equipment is stated at cost. Depreciation is computed using the straight-line method over the following estimated useful lives:

	<b>Years</b>
Land improvements	7 - 20
Buildings and improvements	7 - 40
Equipment	3 - 5
Furniture and fixtures	5 - 7
Vehicles	3
Leasehold improvements	7 - 15

Property and equipment includes the cost of additions and those improvements which increase the capacity or lengthen the useful lives of the assets. Repairs and maintenance costs are expensed as incurred. Property retired or sold is removed from the assets and accumulated depreciation accounts and the resulting gain or loss is reflected in income.

**Advertising Costs**

The Company expenses all advertising costs as incurred

**Revenue Recognition**

Sales of the Company's full service travel plazas, convenience stores and self service fuel facilities are recognized at the time of sale or service.

**Motor Fuel Taxes**

The Company is charged motor fuel taxes by its fuel suppliers and these suppliers remit these taxes to governmental agencies. The Company then collects these taxes from consumers

**Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**Concentration of Credit Risk**

Financial instruments, which potentially subject the Company to concentrations of credit risk, consist principally of cash balances in excess of the \$100,000 limit insured by the U.S. Federal Deposit Insurance Corporation and trade accounts receivable.

(B-I)

5

---

**Note 3 - Employee Stock Ownership Plan**

Effective October 1, 1991, the Company established an employee stock ownership plan (“ESOP”) covering a majority of its full-time employees. Under the Plan, the Company is permitted to make annual contributions to a trust for the benefit of eligible employees in the form of either cash or common shares of the Company.

The ESOP sold its ownership interest in the Company as part of the change in ownership and received cash distributions of \$273,338 at closing and a note of \$721,876, which is part of the \$7,197,272 note provided by AAI.

Through financing of \$1,730,000 from Able Energy, Inc., disclosed in Note 5, the Company repaid the \$721,876 note due to the ESOP shareholders in August, 2005. The Company plans to terminate the ESOP and the ESOP Trustee will distribute the funds to the participants. Application to terminate the ESOP was filed with the Internal Revenue Service on January 31, 2006.

**Note 4 - Assets Held for Sale**

The Company is attempting to sell the property previously occupied by its SOCO Travel Plaza. In the opinion of the Company’s management, this property has a net realizable value which exceeds its carrying value. In December 2005, the Company entered a definitive agreement for the sale of this property for an amount that substantially exceeds the carrying value. Pursuant to the terms of the sales agreement, this sale is expected to consummate in April 2006. The carrying value for this property is \$564,190 for 2005.

**Note 5 - Long-Term Debt**

Long-term debt payable at September 30, 2005 and 2004 was as follows:

	2005	2004
Term loans to GMAC Commercial (“GMACC” <sup>(1)</sup> )	\$ 7,126,166	\$ 7,691,604
Term loan, Capital Crossing Bank <sup>(2)</sup>	4,318,220	4,657,189
Interest only loan, Fundex <sup>(3)</sup>	2,100,000	2,100,000
Interest only loan, PMJ <sup>(4)</sup>	0	750,000
Term loan, Tim Harrington <sup>(5)</sup>	4,750,000	4,750,000
Interest only loan, Avatar Income Fund <sup>(6)</sup> + Note 11	5,200,000	0
Interest only loan, Avatar Funding Group <sup>(6)</sup> + Note 11	800,000	0
Term loan, Lilac <sup>(7)</sup>	5,000,000	0
Interest only loan, Able Energy <sup>(8)</sup>	1,730,000	0
Interest only loan, Crown Financial <sup>(9)</sup>	1,750,000	2,350,000
Note Payable CT Realty <sup>(11)</sup>	3,039,402	0
Nova Ten <sup>(Note 11)</sup>	4,000,000	
Columbian Bank Notes <sup>(Note 11)</sup>	10,000,000	
Eg Capital <sup>(Note 11)</sup>	394,665	
Other <sup>(10)</sup>	525,428	85,265
	53,233,881	22,384,058
Current portion	(6,796,641)	