

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:)
) Chapter 11
)
ARMSTRONG ENERGY, INC., <i>et al.</i> ,) Case No. 17-47541-659
)
) Jointly Administered
Debtors.)

SOLICITATION AND VOTING PROCEDURES

PLEASE TAKE NOTICE THAT on December 18, 2017, the United States Bankruptcy Court for the Eastern District of Missouri (the “Court”) entered an order [Docket No. 322] (the “Disclosure Statement Order”): (a) authorizing Armstrong Energy, Inc. and its affiliated debtors and debtors in possession (collectively, the “Debtors”), to solicit acceptances for the *Debtors’ First Amended Joint Chapter 11 Plan* (as modified, amended, or supplemented from time to time, the “Plan”);¹ (b) approving the *First Amended Disclosure Statement for the Debtors’ First Amended Joint Chapter 11 Plan* [Docket No. 312] (as modified, amended, or supplemented from time to time, the “Disclosure Statement”) as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the “Solicitation Packages”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

A. The Voting Record Date

The Court has approved **December 18, 2017**, as the record date for purposes of determining which Holders of Claims in Class 3 (Senior Notes Secured Claims) and Class 4 (General Unsecured Claims) are entitled to vote on the Plan (the “Voting Record Date”).

B. The Voting Deadline

The Court has approved **January 19, 2018, at 4:00 p.m.** prevailing Central Time as the voting deadline (the “Voting Deadline”) for the Plan. The Debtors may extend the Voting Deadline, in their discretion and in consultation with the Committee and the Supporting Senior Noteholders, without further order of the Court. To be counted as votes to accept or reject the Plan, all ballots (“Ballots”) must be properly executed, completed, and delivered by: (1) first class mail (using the reply envelope provided in the Solicitation Package or otherwise); (2) overnight courier; or (3) personal delivery so that they are ***actually received***, in any case, no later

¹ Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Plan.

than the Voting Deadline by the Claims and Noticing Agent.² All Ballots should be sent to: (a) for hand delivery or overnight mail, Donlin, Recano & Company, Inc., Re: Armstrong Energy, Inc. Ballot Processing, Attn: Voting Department, 6201 15th Ave, Brooklyn, NY 11219, or (b) for first class mail, Donlin, Recano & Company, Inc. Re: Armstrong Energy, Inc. Ballot Processing, Attn: Voting Department, PO Box 192016 Blythebourne Station, Brooklyn, NY 11219.

C. Form, Content, and Manner of Notices

1. The Solicitation Package

The following materials shall constitute the solicitation package (the “Solicitation Package”):

- a. a copy of these Solicitation and Voting Procedures;
- b. the *Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Filed By the Debtors and Related Voting and Objection Procedures*, in substantially the form annexed as Schedule 8 to the Disclosure Statement Order (the “Confirmation Hearing Notice”);
- c. a cover letter, in substantially the form annexed as Schedule 7 to the Disclosure Statement Order describing the contents of the Solicitation Package and urging the Holders of Claims in each of the Voting Classes to vote to accept the Plan;
- d. the applicable form of Ballot, in substantially the form of Ballots annexed as Schedule 3 to the Disclosure Statement Order, as applicable;
- e. the approved Disclosure Statement annexed as Schedule 1 to the Disclosure Statement Order (and exhibits thereto, including the Plan); and
- f. any additional documents that the Court has ordered to be made available.

2. Distribution of the Solicitation Package

The Solicitation Package shall provide the Plan, the Disclosure Statement, and the Disclosure Statement Order (without exhibits except the Solicitation Procedures) in electronic format (*i.e.*, CD-ROM or flash drive format), and all other contents of the Solicitation Package, including Ballots, shall be provided in paper format. Any party that receives the materials in electronic format but would prefer paper format may contact Donlin, Recano & Company, Inc. (the “Claims and Noticing Agent”) by: (a) calling the Debtors’ restructuring hotline at (866) 416-0556 (toll free) or (212) 771-1128 (international); (b) visiting the Debtors’ restructuring website at: <https://www.donlinrecano.com/armstrong>; (c) writing to Donlin, Recano

² Only brokers, banks, or other nominees or an agent of a broker, bank, or other nominee (each of the forgoing, a “Nominee”) for beneficial holders of Senior Notes Claims (each, a “Beneficial Holder”) may return Master Ballots via electronic mail to the Notice and Claims Agent at DRCVote@DonlinRecano.com.

& Company, Inc., Attn.: Armstrong Energy, Inc., *et al.*, 6201 15th Avenue, Brooklyn, New York 11219; and/or (d) emailing DRCVote@DonlinRecano.com and requesting paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

The Debtors shall serve, or cause to be served, all of the materials in the Solicitation Package on: (a) the U.S. Trustee; and (b) all parties who have requested service of papers in this case pursuant to Bankruptcy Rule 2002 as of the Voting Record Date. In addition, the Debtors shall mail, or cause to be mailed, the Solicitation Package to all Holders of Claims in the Voting Classes on or before December 22, 2017, who are entitled to vote, as described in Section D below.³

To avoid duplication and reduce expenses, the Debtors will make every reasonable effort to ensure that any Holder of a Claim who has filed duplicative Claims against a Debtor (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class as against that Debtor.

3. Resolution of Disputed Claims for Voting Purposes; Resolution Event

- a. Absent a further order of the Court, the Holder of a Claim in a Voting Class that is the subject of a pending objection on a “reduce and allow” basis shall be entitled to vote such Claim in the reduced amount contained in such objection.
- b. If a Claim in a Voting Class is subject to an objection other than a “reduce and allow” objection that is filed with the Court on or prior to January 16, 2018: (i) the Debtors shall cause the applicable Holder to be served with a Disputed Claim Notice substantially in the form annexed as Schedule 6 to the Disclosure Statement Order (which notice shall be served together with such objection); and (ii) the applicable Holder shall not be entitled to vote to accept or reject the Plan on account of such claim unless a Resolution Event (as defined herein) occurs as provided herein.
- c. If a Claim in a Voting Class is subject to an objection other than a “reduce and allow” objection that is filed with the Court after January 16, 2018, the applicable Claim shall be deemed temporarily allowed for voting purposes only, without further action by the Holder of such Claim and without further order of the Court, unless the Court orders otherwise.
- d. A “Resolution Event” means the occurrence of one or more of the following events no later than two business days prior to the Confirmation Hearing:

³ Master Ballots (as defined herein) will be distributed to Nominees on or about the date of the initial solicitation mailing in accordance with customary solicitation procedures.

- i. an order of the Court is entered allowing such Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;
 - ii. an order of the Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
 - iii. a stipulation or other agreement is executed between the Holder of such Claim and the Debtors resolving the objection and allowing such Claim in an agreed upon amount; or
 - iv. the pending objection is voluntarily withdrawn by the objecting party.
- e. If a Holder of a Claim has neither received nor voted a Ballot by the Voting Deadline and the Debtors have objected to such Claim, then no later than one business day after the Voting Deadline, the Debtors shall cause the Claims and Noticing Agent to distribute via email, hand delivery, or overnight courier service a Solicitation Package and a pre-addressed, postage prepaid envelope to the relevant Holder to the extent such Holder has not already received a Solicitation Package containing a Ballot.

4. Non-Voting Status Notices for Unimpaired Classes and Classes Deemed to Reject the Plan

Certain Holders of Claims and Interests that are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code or who are not entitled to vote because they are Unimpaired or otherwise presumed to accept the Plan under section 1126(f) of the Bankruptcy Code will receive only the *Non-Voting Status Notice for Unimpaired Claims Conclusively Presumed to Accept the Plan*, substantially in the form annexed as Schedule 4 to the Disclosure Statement Order. Such notice will instruct these Holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots). Certain Holders of Claims and Interests who are not entitled to vote because they are deemed to reject the Plan under section 1126(g) of the Bankruptcy Code will receive the *Non-Voting Status Notice to Holders of Impaired Claims and Equity Interests Deemed to Reject the Plan*, substantially in the form annexed as Schedule 5 to the Disclosure Statement Order. Such notice will instruct these Holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots).

5. Notices in Respect of Executory Contracts and Unexpired Leases

Counterparties to Executory Contracts and Unexpired Leases that receive an *Assumption Notice* or a *Rejection Notice*, substantially in the forms attached as Schedule 9 and Schedule 10 to the Disclosure Statement Order, respectively, may file an objection to the Debtors' proposed assumption, rejection, and/or cure amount, as applicable. Such objections must be filed with the Court and ***actually received*** by the Claims and Noticing Agent by the latter of (a) **January 19, 2018, at 4:00 p.m.** prevailing Central Time or (b) if such Executory Contract or Unexpired

Lease is designated (i) for assumption and assignment to NewCo after initially having been designated for rejection, or (ii) for rejection after initially having been designated for assumption and assignment to NewCo, in each case in accordance with the Transaction Agreement, five Business Days after the counterparty to such Executory Contract or Unexpired Lease has received notice of such new designation.

D. Voting and Tabulation Procedures

1. Holders of Claims Entitled to Vote

Only the following Holders of Claims in the Voting Classes shall be entitled to vote with regard to such Claims:

- a. Holders of Claims who, on or before the Voting Record Date, have timely filed a Proof of Claim that (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Record Date; and (ii) is not the subject of a pending objection, other than a “reduce and allow” objection, filed with the Court prior to January 16, 2018, pending a Resolution Event as provided herein; *provided* that a Holder of a Claim that is the subject of a pending objection on a “reduce and allow” basis shall receive a Solicitation Package and be entitled to vote such Claim in the reduced amount contained in such objection absent a further order of the Court;
- b. Holders of Claims that are listed in the Schedules; *provided* that Claims that are scheduled as contingent or unliquidated (excluding such scheduled contingent or unliquidated Claims that have been paid or superseded by a timely Filed Proof of Claim) shall be allowed to vote only in the amounts set forth in Section D.2(d) of these Voting and Solicitation Procedures;
- c. Holders whose Claims arise (i) pursuant to an agreement or settlement with the Debtors, as reflected in a document filed with the Court, (ii) in an order entered by the Court, or (iii) in a document executed by the Debtors pursuant to authority granted by the Court, in each case regardless of whether a Proof of Claim has been filed;
- d. Holders of any Disputed Claim that has been temporarily allowed to vote on the Plan pursuant to Bankruptcy Rule 3018; and
- e. the assignee of any Claim that was transferred on or before the Voting Record Date by any Entity described in subparagraphs (a) through (d) above; *provided* that such transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the Claims Register on the Voting Record Date.

2. Establishing Claim Amounts for Voting Purposes

Senior Notes Claims in Class 3 and Class 4. The Claims amount of Class 3 and Class 4 Senior Notes Claims of Beneficial Holders for voting purposes only will be established through

the applicable Nominees in the amount of the applicable positions held as of the Voting Record Date, by the Beneficial Holder with the applicable Nominee.

Scheduled Claims. The Claim amount established herein shall control for voting purposes only and shall not constitute the Allowed amount of any Claim. Moreover, any amounts filled in on Ballots by the Debtors through the Claims and Noticing Agent, as applicable, are not binding for purposes of allowance and distribution. In tabulating votes, the following hierarchy shall be used to determine the amount of the Claim associated with each claimant's vote:

- a. the Claim amount (i) settled and/or agreed upon by the Debtors, as reflected in a document filed with the Court, (ii) set forth in an order of the Court, or (iii) set forth in a document executed by the Debtors pursuant to authority granted by the Court;
- b. the Claim amount Allowed (temporarily or otherwise) pursuant to a Resolution Event under Section C.3(d) of these Solicitation and Voting Procedures;
- c. the Claim amount contained in a Proof of Claim that has been timely filed by the applicable Claims Bar Date (or deemed timely filed by the Court under applicable law), except for any amounts asserted on account of any interest accrued after the Petition Date; *provided* that any Ballot cast by a Holder of a Claim who timely files a Proof of Claim in respect of (i) a contingent Claim or a Claim in a wholly-unliquidated or unknown amount (based on a reasonable review by the Debtors and/or the Claims and Noticing Agent) that is not the subject of an objection will count toward satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count as a Ballot for a Claim in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code, and (ii) a partially liquidated and partially unliquidated Claim, such Claim will be Allowed for voting purposes only in the liquidated amount; *provided, further*, that to the extent the Claim amount contained in the Proof of Claim is different from the Claim amount set forth in a document filed with the Court as referenced in subparagraph (a) above, the Claim amount in the document filed with the Court shall supersede the Claim amount set forth on the respective Proof of Claim for voting purposes;
- d. the Claim amount listed in the Schedules (to the extent such Claim is not superseded by a timely filed Proof of Claim); *provided* that such Claim is not scheduled as contingent or unliquidated and/or has not been paid; *provided, further*, that if the applicable Claims Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent or unliquidated shall vote at \$1.00; and
- e. in the absence of any of the foregoing, such Claim shall be disallowed for voting purposes.

3. Voting and Ballot Tabulation Procedures

The following voting procedures and standard assumptions shall be used in tabulating Ballots, subject to the Debtors' right to waive any of the below specified requirements for completion and submission of Ballots after consultation with the Committee and the Supporting Senior Noteholders so long as such requirement is not otherwise required by the Bankruptcy Code, Bankruptcy Rules, or Local Bankruptcy Rules:

- a. except as otherwise provided in the Solicitation and Voting Procedures, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline (as the same may be extended by the Debtors in consultation with the Committee and the Supporting Senior Noteholders), the Debtors shall reject such Ballot as invalid and, therefore, shall not count it in connection with Confirmation of the Plan;
- b. the Claims and Noticing Agent will date-stamp all Ballots when received. The Claims and Noticing Agent shall retain the original Ballots and an electronic copy of the same for a period of one year after the Effective Date of the Plan, unless otherwise ordered by the Court. The Claims and Noticing Agent shall tabulate Ballots on a Debtor-by-Debtor basis;
- c. consistent with the requirements of Local Bankruptcy Rule 3018-1, the Debtors will file with the Court no less than three days prior to the Confirmation Hearing, a voting report (the "Voting Report"). The Voting Report shall, among other things, delineate every Ballot that does not conform to the voting instructions or that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or lacking necessary information, or damaged ("Irregular Ballots"). The Voting Report shall indicate the Debtors' intentions with regard to each Irregular Ballot;
- d. the method of delivery of Ballots to be sent to the Claims and Noticing Agent is at the election and risk of each Holder, and except as otherwise provided, a Ballot will be deemed delivered only when the Claims and Noticing Agent actually receives the executed Ballot;
- e. an executed Ballot is required to be submitted by the Entity submitting such Ballot (except with respect to Master Ballots submitted by Nominees). Delivery of a Ballot to the Claims and Noticing Agent by any electronic means other than as expressly approved by the Disclosure Statement Order or these Solicitation Procedures will not be valid;

- f. no Ballot should be sent to the Debtors, the Debtors' agents (other than the Claims and Noticing Agent), the Debtors' financial or legal advisors, or the Senior Notes Trustee, and if so sent will not be counted;
- g. if multiple Ballots are received from the same Holder with respect to the same Claim prior to the Voting Deadline, the last properly executed Ballot timely received will be deemed to reflect that voter's intent and will supersede and revoke any prior received Ballot;
- h. Holders must vote all of their Claims within a particular Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, to the extent there are multiple Claims within the same Class, the applicable Debtor may, in its discretion aggregate the Claims of any particular Holder within a Class for the purpose of counting votes;
- i. a person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a Holder of Claims must indicate such capacity when signing;
- j. the Debtors, in consultation with the Committee and the Supporting Senior Noteholders and subject to a contrary order of the Court, may waive any defects or irregularities as to any particular Irregular Ballot at any time, either before or after the close of voting, and any such waivers will be documented in the Voting Report;
- k. neither the Debtors, nor any other Entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification;
- l. unless waived or as ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;
- m. in the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted and/or rejected;
- n. subject to any order of the Court, the Debtors reserve the right to reject any and all Ballots not in proper form, the acceptance of which, in the opinion of the Debtors in consultation with the Committee and the Supporting Senior Noteholders, would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules; *provided that* any such rejections will be documented in the Voting Report;

- o. if a Claim has been estimated or otherwise Allowed only for voting purposes by order of the Court, such Claim shall be temporarily Allowed in the amount so estimated or Allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;
- p. if an objection to a Claim is filed, such Claim shall be treated in accordance with the procedures set forth herein;
- q. the following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the Holder of such Claim; (ii) any Ballot cast by any Entity that does not hold a Claim in a Voting Class; (iii) any Ballot cast for a Claim scheduled as unliquidated, contingent, or disputed for which no Proof of Claim was timely filed by the Voting Record Date, *provided* that if the applicable Claims Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent or unliquidated shall vote at \$1.00; (iv) any unsigned Ballot or Ballot lacking an original signature; (v) any Ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; and (vi) any Ballot submitted by any Entity not entitled to vote pursuant to the procedures described herein;
- r. after the Voting Deadline, no Ballot may be withdrawn or modified without the prior written consent of the Debtors;
- s. the Debtors are authorized to enter into stipulations, with the Holder of any Claim agreeing to the amount of a Claim for voting purposes; and
- t. where any portion of a single Claim has been transferred to a transferee, all Holders of any portion of such single Claim will be (i) treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code (and for the other voting and solicitation procedures set forth herein), and (ii) required to vote every portion of such Claim collectively to accept or reject the Plan. In the event that (i) a Ballot, (ii) a group of Ballots within a Voting Class received from a single creditor, or (iii) a group of Ballots received from the various Holders of multiple portions of a single Claim partially reject and partially accept the Plan, such Ballots shall not be counted.

4. Master Ballot Voting and Tabulation Procedures

In addition to the foregoing generally applicable voting and ballot tabulation procedures, the following procedures shall apply to Holders of Senior Notes Claims who hold their positions through a Nominee:

- a. the Claims and Noticing Agent shall distribute or cause to be distributed the appropriate number of copies of Ballots to each Beneficial Holder (a “Beneficial Holder Ballot”) of a Class 3 and Class 4 Senior Notes Claim as of the Voting Record Date;
- b. Nominees identified by the Claims and Noticing Agent as Entities through which Beneficial Holders hold their Claims will be provided with (i) Solicitation Packages for each Beneficial Holder represented by the Nominee as of the Voting Record Date, which will contain a Beneficial Holder Ballot for each Beneficial Holder, and (ii) a master ballot (the “Master Ballot”);
- c. any Nominee for a Beneficial Holder of record with respect to Class 3 or Class 4 Senior Notes Claims shall submit votes on behalf of Beneficial Holders of such Claims in accordance with the following procedures: (i) immediately, and in any event within five Business Days after its receipt of the Solicitation Packages, distributing the Solicitation Packages, including Beneficial Holder Ballots, it receives from the Claims and Noticing Agent to all such Beneficial Holders;⁴ (ii) providing such Beneficial Holders with a return address to send the completed Beneficial Holder Ballots to the Nominee; (iii) compiling and validating the votes and other relevant information of all such Beneficial Holders on the Master Ballot; and (iv) transmitting the Master Ballot to the Claims and Noticing Agent on or before the Voting Deadline;
- d. any Beneficial Holder holding Class 3 and Class 4 Senior Notes Claims as a record Holder in its own name shall vote on the Plan by completing and signing a Beneficial Holder Ballot and returning it directly to the Claims and Noticing Agent on or before the Voting Deadline;

⁴ Solicitation Packages may be sent in paper format or via electronic transmission in accordance with the customary requirements of each Nominee. Each Nominee will then distribute the Solicitation Packages, as appropriate, in accordance with their customary practices and obtain votes to accept or to reject the Plan also in accordance with their customary practices. If it is the Nominee’s customary and accepted practice to submit a “voting instruction form” to the Beneficial Holders for the purpose of recording the Beneficial Holder’s vote, the Nominee will be authorized to send the voting instruction form in lieu of, or in addition to, the vote of a Beneficial Holder.

- e. any Beneficial Holder Ballot returned to a Nominee by a Beneficial Holder shall not be counted for purposes of accepting or rejecting the Plan until such Nominee properly completes and delivers to the Claims and Noticing Agent a Master Ballot that reflects the vote of such Beneficial Holder on or before the Voting Deadline or otherwise validates the Beneficial Holder Ballot in a manner acceptable to the Claims and Noticing Agent. Nominees shall retain all Beneficial Holder Ballots returned by Beneficial Holders for a period of one year after the Effective Date of the Plan;
- f. if a Beneficial Holder holds Class 3 and Class 4 Senior Notes Claims through more than one Nominee or through multiple accounts, such Beneficial Holder may receive more than one Beneficial Holder Ballot and each such Beneficial Holder should execute a separate Beneficial Holder Ballot for each block of Class 3 and Class 4 Senior Notes Claims that it holds through any Nominee and must return each such Beneficial Holder Ballot to the appropriate Nominee;
- g. if a Beneficial Holder holds a portion of its Class 3 and Class 4 Senior Notes Claims through a Nominee or Nominees and another portion in its own name as the record Holder, such Beneficial Holder should follow the procedures described in Section B herein to vote the portion held in its own name and the procedures described in Section D.4 herein to vote the portion held by the Nominee(s);
- h. votes cast by Beneficial Holders through Nominees will be applied to the applicable positions held by such Nominees in Class 3 and Class 4, as of the Voting Record Date, as evidenced by the applicable securities position report(s) obtained from the Depository Trust Company. Votes submitted by a Nominee pursuant to a Master Ballot will not be counted in excess of the amount of such Claims held by such Nominee as of the Voting Record Date;
- i. if conflicting votes or “over-votes” are submitted by a Nominee pursuant to a Master Ballot, the Debtors will use reasonable efforts to reconcile discrepancies with the Nominees. If over-votes on a Master Ballot are not reconciled prior to the preparation of the Voting Report, the Debtors shall apply the votes to accept and to reject the Plan in the same proportion as the votes to accept and to reject the Plan submitted on the Master Ballot that contained the over-vote, but only to the extent of the Nominee’s position in Class 3 and Class 4;
- j. for purposes of tabulating votes, each Nominee or Beneficial Holder will be deemed to have voted the principal amount of its Claims in Class 3 and Class 4, although any principal amounts may be adjusted by the Claims and Noticing Agent to reflect the amount of the Claim actually voted, including prepetition interest;

- k. a single Nominee may complete and deliver to the Claims and Noticing Agent multiple Master Ballots. Votes reflected on multiple Master Ballots will be counted, except to the extent that they are duplicative of other Master Ballots. If two or more Master Ballots are inconsistent, the latest valid Master Ballot received prior to the Voting Deadline will, to the extent of such inconsistency, supersede and revoke any prior received Master Ballot. Likewise, if a Beneficial Holder submits more than one Beneficial Holder Ballot to its Nominee, (i) the latest Beneficial Holder Ballot received before the submission deadline imposed by the Nominee shall be deemed to supersede any prior Beneficial Holder Ballot submitted by the Beneficial Holder, and (ii) the Nominee shall complete the Master Ballot accordingly; and
- l. the Debtors will, upon written request, reimburse Nominees for customary mailing and handling expenses incurred by them in forwarding the Beneficial Holder Ballot and other enclosed materials to the Beneficial Holders for which they are the Nominee. No fees or commissions or other remuneration will be payable to any broker, dealer, or other person for soliciting Beneficial Holder Ballot with respect to the Plan.

E. Amendments to the Plan and Solicitation and Voting Procedures

The Debtors reserve the right to make non-substantive or immaterial changes to the Disclosure Statement, Plan, Ballots, Confirmation Hearing Notice, and related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors, if any, and to make conforming changes among the Disclosure Statement, the Plan, and any other materials in the Solicitation Package before their distribution, in each case in accordance with the Restructuring Support Agreement, Transaction Agreement, and the Plan, as applicable; *provided* that the Debtors shall file on the docket redlines of the Disclosure Statement, Plan, Ballots, Confirmation Hearing Notice, and related documents showing all changes.

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