

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
)	Chapter 11
EMERALD OIL, INC., <i>et al.</i> , ¹)	
)	Case No. 16-10704 (KG)
)	
Debtors.)	(Jointly Administered)
)	

DEBTORS' AMENDED JOINT PLAN OF LIQUIDATION
PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

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Dated: February 8, 2017

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Emerald Oil, Inc. (9000); Emerald DB, LLC (2953); Emerald NWB, LLC (7528); Emerald WB LLC (8929); and EOX Marketing, LLC (4887). The location of the Debtors' service address is: 200 Columbine Street, Suite 500, Denver, Colorado 80206.

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INTRODUCTION

The Debtors propose the following *Debtors' Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* for the resolution of outstanding Claims against, and Interests in, the Debtors. Capitalized terms used in the Plan and not otherwise defined have the meanings ascribed to such terms in Article I of the Plan. On March 24, 2016, the Bankruptcy Court entered an order [Docket No. 36] authorizing the joint administration and procedural consolidation of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). Reference is made to the Disclosure Statement, filed in connection herewith, for a discussion of the Debtors' history, as well as a summary and analysis of the Plan and certain related matters. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL HOLDERS OF CLAIMS AND INTERESTS, TO THE EXTENT APPLICABLE,
ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN
THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

ARTICLE I.

DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

A. *Defined Terms*

As used in this Plan, capitalized terms have the meanings set forth below.

1. “*Administrative Claim*” means a Claim for costs and expenses of administration of the Debtors’ Estates pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors; (b) Allowed Professional Fee Claims; and (c) all Allowed requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code.

2. “*Administrative Claims Objection Bar Date*” means the first Business Day that is 120 days following the Effective Date, except as specifically set forth in the Plan or a Final Order, including, without limitation, the Bar Date Order.

3. “*Administrative Claims Bar Date*” means the first Business Day that is 30 days following the Effective Date, except as specifically set forth in the Plan or a Final Order, including, without limitation, the Bar Date Order.

4. “*Affiliate*” shall have the meaning set forth in section 101(2) of the Bankruptcy Code.

5. “*Allowed*” means with respect to Claims: (a) any Claim, proof of which is timely Filed by the applicable Claims Bar Date (or for which Claim under the Plan, the Bankruptcy Code, or a Final Order of the Bankruptcy Court, a Proof of Claim is not or shall not be required to be Filed); (b) any Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely Filed; or (c) any Claim allowed pursuant to the Plan or a Final Order of the Bankruptcy Court; *provided* that with respect to any Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that with respect to such Claim no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed by a Final Order; *provided, further*, that the Plan Administrator may affirmatively determine to deem Allowed any Claim described in clause (a) notwithstanding the fact that the period within which an objection may be interposed has not yet expired. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be expunged without further action.

by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. Notwithstanding anything to the contrary herein and to the maximum extent provided by applicable law, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes such Debtor, as applicable. For the avoidance of doubt, to the maximum extent provided by applicable law and except as provided herein or otherwise agreed, no Entity may File a Proof of Claim after the Claims Bar Date without further order of the Bankruptcy Court. “Allow” and “Allowing” shall have correlative meanings.

6. “*Avoidance Actions*” means any and all actual or potential claims and causes of action to avoid a transfer of property or an obligation incurred by the Debtors pursuant to any applicable section of the Bankruptcy Code, including sections 544, 545, 547, 548, 549, 550, 551, and 553(b) of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer laws, which was not conveyed to the Purchaser in connection with the Sale Transaction.

7. “*Ballot*” means a ballot authorized by the Bankruptcy Court pursuant to the Disclosure Statement Order to indicate acceptance or rejection of the Plan and to make an election with respect to the third party release provided by Article X.E hereof.

8. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as the same may be amended from time to time.

9. “*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware having jurisdiction over the Chapter 11 Cases, and, to the extent of the withdrawal of any reference under 28 U.S.C. § 157 or the Amended Standing Order of Reference dated February 29, 2012, the United States District Court for the District of Delaware.

10. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court.

11. “*Bar Date Order*” means that certain *Order (I) Setting a Bar Date for Filing Proofs of Claim, Including Requests for Payment under Section 503(b)(9), (II) Setting a Bar Date for the Filing of Proofs of Claim by Governmental Units, (III) Setting a Bar Date for the Filing of Requests for Allowance of Administrative Expense Claims, (IV) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (V) Approving the Form of and Manner for Filing Proofs of Claim, (VI) Approving Notice of Bar Dates, and (VII) Granting Related Relief* [Docket No. 364].

12. “*Beneficiaries*” means Holders of Claims that are to be satisfied with post-Effective Date distributions from the Post-Effective Date Assets, including Holders of (a) Allowed Priority Claims; (b) Allowed Credit Facility Claims; (c) Allowed Other Secured Claims; and (d) Allowed General Unsecured Claims, each in their capacities as such.

13. “*BLM*” means the Montana State Office of the Bureau of Land Management.

14. “*BLM Leases*” means federal oil and gas leases NDM 94704, NDM 94705, NDM 94706 and NDM 94112 between Debtor Emerald WB, LLC and the United States of America.

15. “*Business Day*” means any day, other than a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

16. “*Cash*” means the legal tender of the United States or the equivalent thereof.

17. “*Cash Sale Proceeds*” means the Sale Proceeds that are Cash.

18. “*Causes of Action*” means, subject to the releases, exculpations, and injunctions set forth in the Plan, any claim, cause of action, controversy, right of setoff, cross claim, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, power, privilege, license, and franchise of any kind or character whatsoever, known, unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law, which was not conveyed to the Purchaser in connection with the Sale Transaction and which was property of the Debtors or in which the Debtors held rights as of the Effective Date.

19. “*Chapter 11 Cases*” means (a) when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court and (b) when used with reference to all of the Debtors, the procedurally consolidated and jointly administered chapter 11 cases commenced by the Debtors on the Petition Date and styled *In re Emerald oil, Inc.*, Case No. 16-10704 (KG), which are currently pending before the Bankruptcy Court.

20. “*Claim*” shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

21. “*Claims Bar Date*” means the bar date by which a Proof of Claim must be or must have been Filed, as established by (a) a Final Order of the Bankruptcy Court, including, without limitation, the Bar Date Order, or (b) pursuant to the Plan.

22. “*Claims Objection Bar Date*” means the first Business Day that is 120 days after the Effective Date or such other date as may be fixed by the Bankruptcy Court upon a motion Filed by the Plan Administrator served only on the Bankruptcy Rule 2002 service list (which motion to extend the objection deadline shall not be deemed a modification of the Plan).

23. “*Claims Register*” means the official register of Claims maintained by the Notice and Claims Agent.

24. “*Class*” means a category of Holders of Claims or Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

25. “*Committee*” means the official committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102(a) of the Bankruptcy Code pursuant to that certain *Notice of Appointment of Committee of Unsecured Creditors* filed by the U.S. Trustee on April 6, 2016 [Docket No. 125].

26. “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

27. “*Confirmation Date*” means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

28. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.

29. “*Confirmation Order*” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

30. “*Consolidation*” has the meaning ascribed to it in Article IV.A hereof.

31. “*Consummation*” means the occurrence of the Effective Date.

32. “*Convertible Notes*” means those certain 2% Convertible Senior Notes due 2019 and issued by the Debtors pursuant to the Convertible Notes Indenture.

33. “*Convertible Notes Indenture*” means that certain indenture, dated November 20, 2012, by and between the Parent, as issuer, and the Indenture Trustee.

34. “*Credit Agreement*” means that certain Amended and Restated Credit Agreement, dated as of April 30, 2014 (as amended, restated, supplemented, or otherwise modified from time to time), by and between the Debtors, the Credit Facility Agent, and each of the lenders from time to time party thereto.

35. “*Credit Documents*” means, collectively, the Credit Agreement and all related agreements and documents executed by any of the Debtors in connection with the Credit Agreement, including, for the avoidance of doubt, the DIP Amendment.

36. “*Credit Facility Agent*” means Cortland Capital Market Services LLC, as administrative agent and collateral agent for the Lenders.

37. “*Credit Facility Claims*” means any Claim arising under, derived from, based upon, or related to the Credit Documents, including, for the avoidance of doubt, the DIP Facility Claims.

38. “*Cure Obligations*” means: (a) all amounts (or such other amount as may be agreed upon by the parties under an Executory Contract or Unexpired Lease) required to cure any monetary defaults; and (b) any other obligations required to cure any nonmonetary defaults under any Executory Contract or Unexpired Lease that is to be assumed by the Debtors pursuant to sections 365 or 1123 of the Bankruptcy Code.

39. “*D&O Policies*” means all insurance policies (including any “tail policy”) of any of the Debtors for current or former directors’, managers’, and officers’ liability.

40. “*Debtors*” means, collectively, each of the following: (a) Emerald Oil, Inc.; (b) Emerald DB, LLC; (c) Emerald NWB, LLC; (d) Emerald WB LLC; and (e) EOX Marketing, LLC.

41. “*DGCL*” means the General Corporation Law of the State of Delaware.

42. “*DIP Amendment*” means that certain Debtor in Possession Financing Amendment to Amended and Restated Credit Agreement, dated as of May 6, 2016 (as amended, restated, supplemented, or otherwise modified from time to time), by and between the Debtors, the Credit Facility Agent, and each of the lenders from time to time party hereto.

43. “*DIP Facility*” shall have the meaning ascribed to it in the Final DIP Order.

44. “*DIP Facility Claims*” means all Claims arising from the DIP Facility.

45. “*Disallowed*” means, with respect to any Claim, or any portion thereof, that such Claim, or any portion thereof, is not Allowed.

46. “*Disclosure Statement*” means the *Disclosure Statement for the Debtors’ Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, dated December 30, 2016 [Docket No.985], as amended, supplemented, or otherwise modified from time to time, including all exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

47. “*Disclosure Statement Order*” means the Order approving the Disclosure Statement.

48. “*Disputed*” means, with respect to any Claim, any Claim that is not yet Allowed.

49. “*Distribution Record Date*” means the first Business Day that is two Business Days after the Confirmation Date.

50. “*Distribution Reserve Accounts*” means the Priority Claims Reserve, the Undeliverable Distribution Reserve, the Plan Administrator Expense Reserve, the Other Secured Claims Reserve, and the GUC Reserve established pursuant to this Plan.

51. “*DTC*” means Depository Trust Company.

52. “*Effective Date*” means the date selected by the Debtors on which: (a) no stay of the Confirmation Order is in effect; and (b) all conditions precedent specified in Article XI of the Plan have been satisfied or waived. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable after the Effective Date.

53. “*Entity*” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

54. “*Estate*” means, as to each Debtor, the estate created for such Debtor on the Petition Date pursuant to sections 301 and 541 of the Bankruptcy Code.

55. “*Excluded Assets*” shall have the meaning ascribed to it in the Purchase Agreement; *provided* that the Excluded Assets shall not include the Cash Sale Proceeds.

56. “*Exculpated Parties*” means, collectively: (a) each Debtor; (b) the Debtors’ current and former officers, directors, and managers; (c) each of the foregoing Entities’ respective predecessors, successors and assigns, and current and former members, limited partners, general partners, Affiliates, principals, partners, parents, members, employees, agents, officers, directors, managers, trustees, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants, in each case solely in their capacity as such; and (d) the Committee and the Committee Members and each of the Committee’s agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in each case solely in their capacity as such.

57. “*Executory Contract*” means a contract or lease to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

58. “*Federal Judgment Rate*” means the federal judgment rate in effect as of the Effective Date.

59. “*File*,” “*Filed*,” or “*Filing*” means file, filed, or filing in the Chapter 11 Cases with the Bankruptcy Court or, with respect to the filing of a Proof of Claim, the Notice and Claims Agent.

60. “*Final DIP Order*” means the *Final Agreed Order Authorizing Limited Use of Cash Collateral, Obtaining Post-Petition Credit Secured By Senior Liens, Granting Adequate Protection to Existing Lienholders and Granting Related Relief*, entered on May 6, 2016 [Docket No. 287].

61. “*Final Order*” means an order or judgment of the Bankruptcy Court (or any other court of competent jurisdiction) entered by the Clerk of the Court (or the clerk of such other court) on the docket in the Chapter 11 Cases (or the docket of such other court), which has not been reversed, stayed, modified, amended, or vacated, and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, stay, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or motion for new trial, stay, reargument, or rehearing shall be pending or (b) if an appeal, writ of certiorari, new trial, stay, reargument, or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, stay, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari, or move for a new trial, stay, reargument, or rehearing shall have expired, as a result of which such order shall have become final in accordance with rule 8002 of the Bankruptcy Rules; *provided* that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause an order not to be a Final Order.

62. “*General Account*” means a general account (a) into which shall be deposited revenues and proceeds of all assets of the Debtors and Cash in an amount in excess of the amount required to adequately maintain any other account or reserve described in or contemplated by the Plan; *provided* that the General Account shall not include funds required to be deposited into such account or reserve, (b) from which shall be made payments to any Distribution Reserve Account (other than GUC Reserve) that does not contain Cash in an amount sufficient to adequately maintain such Distribution Reserve Account; and (c) from which shall be made payments to the Lenders on Subsequent Distribution Dates; provided that if the Lenders receive a full recovery on account of their Allowed Credit Facility Claims, payments from the General Account shall be made to the Holders of Allowed General Unsecured Claims.

63. “*General Unsecured Claim*” means any Claim against the Debtors that is not otherwise paid in full during the Chapter 11 Cases and is not: (a) an Administrative Claim; (b) a Professional Fee Claim; (c) a Priority Tax Claim; (d) an Other Priority Claim; (e) an Other Secured Claim; (f) a Credit Facility Claim; (g) an Intercompany Claim; or (h) a Section 510(b) Claim.

64. “*GUC Administration Costs*” means the costs and expenses—including those related to the GUC Oversight Representative, the Indenture Trustee on account of distributions made to holders of Convertible Notes, accounting, claims reconciliation, settlement, compromise, and objections, together with the reasonable fees and expenses payable to the Plan Administrator, professionals, independent contractors, and other third parties in connection therewith—incurred on and after the Effective Date in connection with the administration of General Unsecured Claims under the Plan. For the avoidance of doubt, (a) GUC Administration Costs shall be paid from the Plan Administrator Expense Reserve Account only, (b) GUC Administration Costs paid to the GUC Oversight Representative shall not exceed \$50,000; and (c) the costs and expenses incurred on and after the Effective Date in connection with the distribution of funds (meaning the administrative costs, materials, and postage) from the GUC Reserve on account of Allowed General Unsecured Claims held by Participating GUC Holders shall not constitute GUC Administration Costs, but will be paid from the Plan Administrator Expense Reserve Account.

65. “*GUC Oversight Representative*” means Whiteford, Taylor & Preston, LLC.

66. “*GUC Reserve*” means a separate, segregated account to be established and maintained by the Plan Administrator and funded with the GUC Reserve Amount pursuant to Article VIII.F hereof.

67. “*GUC Reserve Amount*” means \$2,000,000 to be used by the Plan Administrator in accordance with Article VIII.F hereof.

68. “*Governmental Unit*” shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

69. “*Holder*” means any Entity holding a Claim or an Interest.

70. “*Impaired*” means, with respect to a Claim or Interest, or Class of Claims or Interests, “impaired” within the meaning of section 1124 of the Bankruptcy Code.

71. “*Indemnification Provisions*” means each of the Debtors’ indemnification provisions currently in place as of the Effective Date, whether in the bylaws, certificates of incorporation or formation, limited liability company agreements, other organizational or formation documents, board resolutions, management or indemnification agreements, or employment or other contracts, for their current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals and agents of the Debtors, as applicable, and such parties’ respective Affiliates.

72. “*Indenture Trustee*” means U.S. Bank, National Association, in its capacity as indenture trustee under the Convertible Notes Indenture, or any successor thereto.

73. “*Initial Distribution Date*” means the date on which the Debtors or the Plan Administrator make initial distributions to Holders of Allowed Claims pursuant to the Plan.

74. “*Intercompany Claim*” means any Claim held by a Debtor against another Debtor.
75. “*Intercompany Interest*” means any Interest in a Debtor held by another Debtor.
76. “*Interest*” means any interest, equity, or share in the Debtors, including all options, warrants, or other rights to obtain such an interest or share in such Debtor, whether or not certificated, transferable, preferred, common, voting, or denominated “stock” or a similar security, including any Claim subject to subordination under section 510(b) of the Bankruptcy Code arising therefrom.
77. “*Interim Compensation Order*” means the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and (II) Granting Related Relief*, entered on May 11, 2016 [Docket No. 311].
78. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.
79. “*Lenders*” means each Lender (as defined in the Credit Agreement) that is a party to the Credit Agreement.
80. “*Lien*” shall have the meaning set forth in section 101(37) of the Bankruptcy Code.
81. “*Local Bankruptcy Rules*” means the local rules of bankruptcy practice and procedure of the United States Bankruptcy Court for the District of Delaware.
82. “*Non-Participating GUC Holder*” means any Holder of a Class 4 Claim that votes to reject the Plan or abstains from voting.
83. “*Notice and Claims Agent*” means Donlin, Recano & Company, Inc., in its capacity as notice and claims agent and administrative advisor for the Debtors’ Estates pursuant to 28 U.S.C. § 156(c).
84. “*Order*” means an order of the Bankruptcy Court.
85. “*Ordinary Course Professional*” means professionals employed by the Debtors in the ordinary course of their business pursuant to the Ordinary Course Professionals Order.
86. “*Ordinary Course Professionals Order*” means the *Order (I) Authorizing the Debtors to Retain and Compensate Professionals Utilized in the Ordinary Course of Business and (II) Granting Related Relief*, entered on April 19, 2016 [Docket No. 207].
87. “*Other Priority Claim*” means a Claim asserting a priority described in section 507(a) of the Bankruptcy Code, other than: (a) a Credit Facility Claim; (b) an Administrative Claim; (c) a Professional Fee Claim; or (d) a Priority Tax Claim, to the extent such Claim has not already been paid during the Chapter 11 Cases.
88. “*Other Secured Claim*” means a Secured Claim that is senior to the Credit Facility Claims, including a Secured Tax Claim.
89. “*Other Secured Claims Reserve*” means the account to be established and maintained by the Plan Administrator and funded with the Other Secured Claims Reserve Amount pursuant to Article VIII.E.
90. “*Other Secured Claims Reserve Amount*” means \$966,508.26.
91. “*Parent*” means Emerald Oil, Inc.
92. “*Participating GUC Holder*” means any Holder of a Class 4 Claim that votes to accept the Plan.
93. “*Person*” shall have the meaning set forth in section 101(41) of the Bankruptcy Code.

94. “*Petition Date*” means March 22, 2016, the date on which the Debtors commenced the Chapter 11 Cases.

95. “*Plan*” means this *Debtors’ Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, as amended, supplemented, or otherwise modified from time to time, including the Plan Supplement, which is incorporated in the Plan by reference and made part of this Plan as if set forth in the Plan.

96. “*Plan Administrator*” means the Debtors’ Chief Restructuring Officer, or such other Person designated by the Debtors before the Confirmation Hearing.

97. “*Plan Administrator Expense Reserve*” means a segregated account established by the Plan Administrator established in accordance with Article VIII.D.

98. “*Plan Administrator Expense Reserve Amount*” means \$650,000.

99. “*Plan Supplement*” means the compilation of documents and forms of documents, schedules, and exhibits to the Plan, to be Filed at least 14 days prior to the Confirmation Hearing, as amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof, the Bankruptcy Code, and the Bankruptcy Rules, including: (a) a list of Executory Contracts and Unexpired Leases to be assumed pursuant to the Plan, and as may be amended by the Debtors in accordance with the Plan prior to the Effective Date; (b) a schedule of retained Causes of Action; (c) identification and compensation of the Plan Administrator; and (d) the amount of the Priority Claims Reserve.

100. “*Post-Effective Date Debtor*” means Emerald WB LLC.

101. “*Post-Effective Date Debtor Assets*” means: (a) all Causes of Action not previously sold, settled, exculpated or released by the Debtors or their Estates; (b) the Excluded Assets; (c) the Debtors’ rights under the Purchase Agreement, including all rights of recovery under the Purchase Agreement and any ancillary agreements among the Debtors and the Purchaser; (d) the Distribution Reserve Accounts; and (e) all other assets of the Debtors or of the Estates existing on the Effective Date after giving effect to all distributions required to be made as of, prior to, or after the Effective Date by an Entity other than the Plan Administrator. For the avoidance of doubt, the Post-Effective Date Assets shall not include (y) any claims or Causes of Action released pursuant to Article X.C Article X.C hereof or exculpated pursuant to Article X.F hereof; or (z) funds held in the Professional Fee Escrow.

102. “*Priority Claims*” means, collectively the: (a) Administrative Claims; (b) Priority Tax Claims; and (c) Other Priority Claims.

103. “*Priority Claims Reserve*” means the account to be established and maintained by the Plan Administrator and funded with the Priority Claims Reserve Amount pursuant to Article VIII.C hereof.

104. “*Priority Claims Reserve Amount*” means Cash in an amount to be determined by the Debtors in consultation with the Holders of Credit Facility Claims, as set forth in the Plan Supplement, which amount shall be funded by the Debtors and used by the Plan Administrator for the payment of Allowed Priority Claims to the extent that such Priority Claims have not been paid in full on or before the Effective Date.

105. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

106. “*Pro Rata*” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class, or the proportion that Allowed Claims in a particular Class bear to the aggregate amount of Allowed Claims in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim under the Plan; *provided* that for the purposes of determining the Pro Rata share of the GUC Reserve, the proportion of an Allowed Class 4 Claim shall be compared to the aggregate amount of Allowed Class 4 Claims of Participating GUC Holders only.

107. “*Professional*” means any Entity retained in the Chapter 11 Cases in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered and expenses incurred pursuant to sections 326, 327, 328, 329, 330, 331, or 363 of the Bankruptcy Code.

108. “*Professional Fee Claims*” means all Claims for reasonable and documented accrued fees and expenses (including transaction or sale fees) for services rendered by a Professional through and including the Effective Date, to the extent such fees and expenses have not been paid pursuant to the Interim Compensation Order or any other order of the Court and regardless of whether a monthly fee statement or interim fee application has been Filed for such fees and expenses. To the extent the Court denies or reduces by a Final Order any amount of a Professional’s fees or expenses, then the amount by which such fees or expenses are reduced or denied shall reduce the applicable Professional Fee Claim.

109. “*Professional Fee Escrow*” means an interest-bearing escrow account to hold and maintain an amount of Cash equal to the Professional Fee Escrow Amount funded by the Debtors as soon as reasonably practicable after the Effective Date and no later than the Effective Date solely for the purpose of paying all remaining Allowed and unpaid Professional Fee Claims. Such Cash shall remain subject to the jurisdiction of the Bankruptcy Court.

110. “*Professional Fee Escrow Amount*” means the aggregate unpaid Professional Fee Claims through the Confirmation Date as estimated in accordance with Article II.B.1.

111. “*Proof of Claim*” means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

112. “*Purchase Agreement*” means that certain Asset Purchase Agreement by and among the Debtors and the Purchaser, dated as of November 1, 2016, as amended, supplemented, or modified from time to time.

113. “*Purchaser*” means New Emerald Energy, LLC, together with its successors and permitted assigns.

114. “*Released Parties*” means: (a) each Debtor; (b) the Debtors’ current and former officers, directors, and managers; (c) the Lenders (solely in their respective capacities as Lenders under the Credit Documents) and the Credit Facility Agent (solely in its capacity as Credit Facility Agent under the Credit Documents); (d) the Committee; (e) the Indenture Trustee; and (f) each of the foregoing Entities’ respective predecessors, successors and assigns, and current and former stockholders, members, limited partners, general partners, equity holders, Affiliates and its and their subsidiaries, principals, partners, parents, equity holders, members, employees, agents, officers, directors, managers, trustees, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants, in each case solely in their capacity as such; *provided* that as a condition to receiving or enforcing any release granted pursuant to Article X.D or Article X.E hereof, each Released Party and its Affiliates shall release or be deemed to have released the Releasing Parties, the Estates, and the Debtors for any and all Claims or Causes of Action arising from or related to their relationship with the Debtors, but not, for the avoidance of doubt, Professional Fee Claims.

115. “*Releasing Parties*” means: (a) the Released Parties; (b) all Holders of Claims and Interests who are deemed to accept the Plan; (c) all Holders of Claims who vote to accept the Plan; (d) all holders of Claims entitled to vote on the Plan who abstain from voting on the Plan and who do not opt out of the releases provided by the Plan; (e) all holders of Claims entitled to vote on the Plan who vote to reject the Plan and who do not opt out of the releases provided by the Plan; (f) the Committee; and (g) with respect to each of the foregoing Entities, their members, limited partners, general partners, Affiliates, principals, partners, parents, members, employees, agents, officers, directors, managers, trustees, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants, in each case solely in their capacity as such.

116. “*Retained Actions*” means all claims, Causes of Action, rights of action, suits and proceedings, whether in law or in equity, whether known or unknown, which any Debtor or any Estate may hold against any Entity, including (a) claims and causes of action brought prior to the Effective Date, (b) claims and causes of action against any Entities for failure to pay for products or services provided or rendered by any of the Debtors, (c) claims and causes of action relating to strict enforcement of any of the Debtors’ intellectual property rights, including patents, copyrights and trademarks, including claims against third parties for infringement of any such intellectual

property rights or other misuse of such intellectual property, and (d) claims and causes of action seeking the recovery of any of the Debtors' accounts receivable or other receivables or rights to payment created or arising in connection with any of the Debtors' businesses, including claim overpayments and tax refunds; *provided* that the Retained Actions shall not include all Causes of Action settled, released, or exculpated under the Plan.

117. "*Sale Proceeds*" means all proceeds from the Sale Transaction, including the Cash Sale Proceeds from the Sale Transaction and the right to enforce the Purchase Agreement.

118. "*Sale Transaction*" means that certain transaction between the Debtors and the Purchaser as set forth in the Purchase Agreement and the *Order (A) Approving the Asset Purchase Agreement Between the Debtors and the Purchaser, (B) Authorizing the Sale of Certain of the Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (C) Authorizing the Assumption and Assignment of Contracts, and (D) Granting Related Relief*, entered on November 1, 2016 [Docket No. 874].

119. "*Schedules*" means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

120. "*Section 510(b) Claims*" means any Claim subject to subordination under section 510(b) of the Bankruptcy Code.

121. "*Secured Claim*" means a Claim: (a) secured by a Lien on property in which the applicable Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in such Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) otherwise Allowed pursuant to the Plan or a Final Order as a Secured Claim.

122. "*Secured Tax Claim*" means any Secured Claim that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

123. "*Solicitation Date*" means the date upon which the Debtors commence the solicitation process in accordance with the Disclosure Statement Order.

124. "*Solicitation Procedures*" means that form of solicitation procedures approved by and attached as an exhibit to the Disclosure Statement Order.

125. "*Subsequent Distribution Date*" means the date following the Initial Distribution Date on which the Plan Administrator in its reasonable discretion elects to make distributions to Holders of Allowed Claims pursuant to the Plan.

126. "*Unexpired Lease*" means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

127. "*Unimpaired*" means, with respect to a Class of Claims or Interests, a Claim or an Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

128. "*United States*" means the United States of America and its agencies.

129. "*U.S. Trustee*" means the United States Trustee for the District of Delaware.

130. "*U.S. Trustee Fees*" means fees arising under 28 U.S.C. § 1930(a)(6) and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

131. “*Wind Down*” means the wind down and dissolution of the Debtors’ Estates following the Effective Date as set forth in Article VII.B hereof.

B. Rules of Interpretation

For purposes herein: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) except as otherwise provided, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) except as otherwise provided, any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, restated, supplemented, or otherwise modified in accordance with the terms of the Plan; (4) unless otherwise specified, all references herein to “Articles” are references to Articles of the Plan or hereto; (5) unless otherwise stated, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (6) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (7) the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words “without limitation;” (8) unless otherwise specified, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (9) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (10) any docket number references in the Plan shall refer to the docket number of any document Filed with the Bankruptcy Court in the Chapter 11 Cases; (11) references to “Proofs of Claim,” “Holders of Claims,” “Disputed Claims,” and the like shall include “Proofs of Interest,” “Holders of Interests,” “Disputed Interests,” and the like as applicable; (12) references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers,” as applicable, as such terms are defined under the applicable state limited liability company laws; (13) any immaterial effectuating provisions may be interpreted by the Debtors or the Plan Administrator in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; and (14) except as otherwise provided, any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter.

C. Computation of Time

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

D. Governing Law

Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to conflict of laws principles.

E. Reference to Monetary Figures

All references in the Plan to monetary figures shall refer to currency of the United States, unless otherwise expressly provided in the Plan.

F. Controlling Document

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the Plan shall

control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

ARTICLE II.

ADMINISTRATIVE AND PRIORITY CLAIMS

A. *Administrative Claims*

Subject to the provisions of sections 327, 330(a), and 331 of the Bankruptcy Code, except to the extent that a Holder of an Allowed Administrative Claim and, as applicable, the Debtors or the Plan Administrator agree to less favorable treatment or has been paid by any applicable Debtor prior to the Effective Date, the Debtors or the Plan Administrator shall pay each Holder of an Allowed Administrative Claim the full unpaid amount of such Allowed Administrative Claim in Cash: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if an Administrative Claim is Allowed after the Effective Date, on the date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due) with a Cash distribution from the Priority Claims Reserve by the Plan Administrator; (3) at such time and upon such terms as may be agreed upon by such Holder and the Debtors or the Plan Administrator, as applicable; or (4) at such time and upon such terms as set forth in an order of the Bankruptcy Court; *provided* that any Administrative Claim that has been assumed by the Purchaser pursuant to the Purchase Agreement shall not be an obligation of the Debtors.

1. Administrative Claims Bar Date

Except as otherwise provided by a Final Order previously entered by the Bankruptcy Court (including the Bar Date Order) or as provided by this Article II, unless previously Filed, requests for payment of Administrative Claims, other than requests for payment of Professional Fee Claims, must be Filed and served on the Debtors no later than the Administrative Claims Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, their Estates, or the Plan Administrator, and such Administrative Claims shall be deemed compromised, settled, and released as of the Effective Date. Objections to such requests must be Filed and served on the requesting party by the Administrative Claims Objection Bar Date.

2. Priority Claims Reserve

As soon as reasonably practicable after the Confirmation Date and no later than the Effective Date, the Debtors shall fund the Priority Claims Reserve in Cash as described in Article VIII.C hereof. Any amounts remaining in the Priority Claims Reserve after payment of all Allowed Priority Claims shall be transferred to the Plan Administrator and shall be distributed in accordance with the Plan.

B. *Professional Compensation*

1. Final Fee Applications and Payment of Professional Fee Claims

All final requests for payment of Professional Fee Claims incurred during the period from the Petition Date through the Effective Date, shall be Filed no later than 60 days after the Effective Date. All such final requests will be subject to approval by the Court after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules and prior Bankruptcy Court orders, including the Interim Compensation Order, and once approved by the Court, shall be promptly paid from the Professional Fee Escrow up to the full Allowed amount. To the extent that funds held in the Professional Fee Escrow are unable to satisfy the amount of Professional Fee Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Claim for any such deficiency, which shall be satisfied in accordance with Article II.A of the Plan.

2. Professional Fee Escrow

On the Effective Date, the Debtors or the Post-Effective Date Debtor shall establish and fund the Professional Fee Escrow. The Professional Fee Escrow shall be maintained in trust for the Professionals. Such funds shall not be considered property of the Debtors' Estates or of the Post-Effective Date Debtor. The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals from funds held in the Professional Fee Escrow as soon as reasonably practicable after such Claims are Allowed by a Final Order. When all such Allowed amounts owing to Professionals have been paid in full, any remaining amount in the Professional Fee Escrow Account shall promptly be transferred to the General Account and shall be distributed in accordance with the Plan without any further action or order of the Court.

3. Estimation of Fees and Expenses.

Professionals shall reasonably estimate their unpaid Professional Fee Claims and other unpaid fees and expenses incurred before and as of the Effective Date and shall deliver such estimate to the Debtors no later than five business days prior to the Effective Date; *provided* that such estimate shall not be considered an admission with respect to the fees and expenses of such Professional and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unbilled fees and expenses of such Professional.

4. Post-Effective Date Fees and Expenses.

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Debtors or the Post-Effective Date Debtor shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable, actual, and documented legal, professional, or other fees and expenses incurred on or after the Effective Date by the Professionals. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code, the Interim Compensation Order, or the Ordinary Course Professionals Order in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors may employ and pay any Professional or Ordinary Course Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

C. Priority Tax Claims

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. In the event an Allowed Priority Tax Claim is also a Secured Tax Claim, such Claim shall, to the extent it is Allowed, be treated as an Other Secured Claim if such Claim is not otherwise paid in full. On the Effective Date, any Liens securing any Allowed Priority Tax Claims shall be deemed released, terminated, and extinguished, in each case without further notice to or order of the Bankruptcy Court, act, or action under applicable law, regulation, order or rule, or the vote, consent, authorization, or approval of any Person.

D. U.S. Trustee Statutory Fees

The Debtors or the Plan Administrator, as applicable, shall pay all U.S. Trustee Fees for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

ARTICLE III.

CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Priority Tax Claims, and Professional Fee Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in this Article III.

A. *Summary of Classifications*

All Claims and Interests, other than Administrative Claims, Priority Tax Claims, and Professional Fee Claims, are classified in the Classes set forth in this Article III for all purposes, including voting, Confirmation, and distributions under the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest is also classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date. The Debtors reserve the right to withdraw the Plan with respect to one or more Debtors while seeking Confirmation or approval of the Plan with respect to all other Debtors. Certain of the Debtors may not have Holders of Claims or Interests in a particular Class or Classes, and such Claims shall be treated as set forth in Article III.D hereof.

1. Substantive Consolidation of the Estates

Pursuant to Article IV.A hereof, the Plan constitutes a separate chapter 11 plan of reorganization for each Debtor and the classifications set forth in Classes 1 through 7 shall be deemed to apply to each Debtor, except for Class 8, which only applies to Parent. If substantive consolidation is ordered pursuant to Article IV.A of the Plan, each Class with respect to the Debtors shall vote as set forth in this Article III. If substantive consolidation is not ordered, each Class of Claims against or Interests in the Debtors shall be deemed to constitute separate sub-Classes of Claims against and Interests in each of the Debtors, as applicable, and each such sub-Class shall vote as a single separate Class for each of the Debtors, as applicable, and the confirmation requirements of section 1129 of the Bankruptcy Code must be satisfied separately with respect to each of the Debtors.

2. Class Identification

The classification of Claims against and Interests in each Debtor (as applicable) pursuant to the Plan is as set forth below. To the extent there are no Holders of Claims or Interests in a particular Class or Classes, such Claims or Interests shall be treated as set forth in Article III.D hereof.

Class	Claims and Interests	Status	Voting Rights
1	Allowed Priority Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)
2	Credit Facility Claims	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Intercompany Claims	Impaired	Not Entitled to Vote (Deemed to Reject)

Class	Claims and Interests	Status	Voting Rights
6	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
7	Intercompany Interests	Impaired	Not Entitled to Vote (Deemed to Reject)
8	Interests in Parent	Impaired	Not Entitled to Vote (Deemed to Reject)

B. Treatment of Classes of Claims and Interests

Except to the extent that the Debtors and a Holder of an Allowed Claim or Interest, as applicable, agrees to a less favorable treatment, such Holder shall receive under the Plan the treatment described below in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for such Holder's Allowed Claim or Interest. Unless otherwise indicated, each Holder of an Allowed Claim or Interest, as applicable, shall receive such treatment on the Effective Date (or, if payment is not then due, in accordance with its terms in the ordinary course) or as soon as reasonably practicable thereafter, the timing of which shall be subject to the reasonable discretion of the Debtors or the Plan Administrator, as applicable.

1. Class 1—Allowed Priority Claims

- (a) *Classification:* Class 1 consists of Allowed Priority Claims against any Debtor.
- (b) *Treatment:* Each Holder of an Allowed Class 1 Claim shall either (i) be paid by the Plan Administrator from the Priority Claims Reserve, as set forth in Article VIII.C of this Plan, the amount of such Holder's Allowed Class 1 Claim on the later of (A) the Effective Date (or as soon as reasonably practicable thereafter), and (B) fifteen Business Days following the date such Claim is Allowed by Non-Appealable Order, or (ii) receive such other less favorable treatment from the Post-Effective Date Debtor Assets that may be agreed upon in writing by the Plan Administrator and such Holder. The Cash payment shall be in exchange for and in full satisfaction and discharge of the Holder's Allowed Priority Claim.
- (c) *Voting:* Class 1 is Unimpaired. Each Holder of an Allowed Class 1 Claim is conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, each Holder of an Allowed Class 1 Claim is not entitled to vote to accept or reject the Plan.

2. Class 2—Credit Facility Claims

- (a) *Classification:* Class 2 consists of all Credit Facility Claims.
- (b) *Allowance:* Class 2 Claims shall be Allowed in the amount of \$27,678,151.00.
- (c) *Treatment:* Each Holder of an Allowed Class 2 Claim shall be satisfied in full by the payment by the Plan Administrator of the distributions of surplus Cash from the General Account, as set forth in Article VIII.G. Such payments shall be in exchange for and in full satisfaction and discharge of all Allowed Class 2 Claims.
- (d) *Voting:* Class 2 is Impaired. Each Holder of an Allowed Class 2 Claim is entitled to vote to accept or reject the Plan.

3. Class 3—Other Secured Claims

- (a) *Classification:* Class 3 consists of all Other Secured Claims, including all Secured Tax Claims, against any Debtor.
- (b) *Treatment:* Except to the extent that a Holder of an Allowed Class 3 Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for each Class 3 Claim, each such Holder shall receive, at the Plan Administrator's election:
 - (i) payment in full in Cash of such Holder's Allowed Other Secured Claim with a distribution from the Other Secured Claims Reserve;
 - (ii) the Post-Effective Date Debtor's interest in the Collateral securing such Holder's Allowed Other Secured Claims; or
 - (iii) such other treatment rendering such Holder's Allowed Other Secured Claim Unimpaired.
- (c) *Voting:* Class 3 is Unimpaired. Each Holder of an Allowed Class 3 Claim is conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, each Holder of an Allowed Class 3 Claim is not entitled to vote to accept or reject the Plan.

4. Class 4—General Unsecured Claims

- (a) *Classification:* Class 4 consists of all General Unsecured Claims against any Debtor.
- (b) *Allowance:* The Indenture Trustee shall have an Allowed General Unsecured Claim entitled to treatment as an Allowed Class 4 Claim in the amount of \$149,919,000.00 for all of its Claims under the Convertible Notes and Convertible Notes Indenture, and all other Claims asserted by the Indenture Trustee shall be deemed disallowed.
- (c) *Treatment:* Each Holder of an Allowed Class 4 Claim shall receive, as applicable:
 - (i) If the Allowed Class 4 Claim is held by a Participating GUC Holder, such Holders will receive its Pro Rata share of the Cash held in the GUC Reserve as set forth in Article VIII.F of this Plan; or
 - (ii) If the Allowed Class 4 Claim is held by a Non-Participating GUC Holder, such Holders will not receive any distribution on account of such Allowed Class 4 Claim.
- (d) *Voting:* Class 4 is Impaired. Each Holder of an Allowed Class 4 Claim is entitled to vote to accept or reject the Plan.

5. Class 5—Intercompany Claims

- (a) *Classification:* Class 5 consists of all Intercompany Claims.
- (b) *Treatment:* Class 5 Claims will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and each Holder of a Class 5 Claim will not receive any distribution on account of such Class 5 Claim.

- (c) *Voting:* Class 5 is Impaired. Each Holder of a Class 5 Claim is deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, is not entitled to vote to accept or reject the Plan.

6. Class 6—Section 510(b) Claims

- (a) *Classification:* Class 6 consists of all Section 510(b) Claims.
- (b) *Treatment:* Class 6 Claims will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and each Holder of a Class 6 Claim will not receive any distribution on account of such Class 6 Claim. The Debtors are not aware of any valid Section 501(b) Claims and believe that no such Section 510(b) Claims exist.
- (c) *Voting:* Class 6 is Impaired. Each Holder of a Class 6 Claim is deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, is not entitled to vote to accept or reject the Plan.

7. Class 7—Intercompany Interests

- (a) *Classification:* Class 7 consists of all Intercompany Interests.
- (b) *Treatment:* Class 7 Interests will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and each Holder of Class 7 Interests will not receive any distribution on account of such Class 7 Interests.
- (c) *Voting:* Class 7 is Impaired. Each Holder of Class 7 Interests is deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, is not entitled to vote to accept or reject the Plan.

8. Class 8—Interests in Parent

- (a) *Classification:* Class 8 consists of all Interests in the Parent.
- (b) *Treatment:* Class 8 Interests will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and each Holder of Class 8 Interests will not receive any distribution on account of such Class 8 Interests.
- (c) *Voting:* Class 8 is Impaired. Each Holder of Class 8 Interests is deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, is not entitled to vote to accept or reject the Plan.

C. *Special Provision Governing Unimpaired Claims*

Except as otherwise provided in the Plan, nothing under the Plan shall affect, diminish, or impair the rights of the Plan Administrator, the Debtors, or the Debtors' Estates in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

D. *Elimination of Vacant Classes*

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

E. Voting Classes; Presumed Acceptance by Non-Voting Classes

If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Debtors shall request the Bankruptcy Court to deem the Plan accepted by the Holders of such Claims or Interests in such Class.

F. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code

The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article XII hereof to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

G. Controversy Concerning Impairment

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Subordinated Claims

The allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors or the Post-Effective Date Debtor reserve the right to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

ARTICLE IV.

MEANS FOR IMPLEMENTATION OF THE PLAN

A. Substantive Consolidation

The Plan shall serve as a motion by the Debtors seeking entry of an order substantively consolidating each of the Estates of the Debtors into a single consolidated Estate solely for the limited purposes of voting, Confirmation, and distribution. For the avoidance of doubt, the Plan shall not serve as a motion by the Debtors seeking entry of an order substantively consolidating the Debtors for any other purposes. Notwithstanding anything in this Article IV.A of the Plan, all distributions under the Plan shall be made in accordance with Article VI of the Plan.

If the Debtors' estates are substantively consolidated in accordance with this Article IV.A, then, on and after the Effective Date, all assets and liabilities (including Allowed Claims) of the Debtors shall be treated as though they were merged into one Estate solely for purposes of voting, Confirmation, and distribution. The limited substantive consolidation described herein shall not affect the legal and organizational structure of the Debtors or their separate corporate existences or any prepetition or postpetition guarantees, Liens, or security interests that are required to be maintained under the Bankruptcy Code, under the Plan, or, with respect to Executory Contracts or Unexpired Leases that were assumed or entered into during the Chapter 11 Cases, if any. **Moreover, any alleged defaults under any applicable agreement with the Debtors, the Post-Effective Date Debtor, or their respective Affiliates arising from substantive consolidation under the Plan shall be deemed cured as of the Effective Date.**

If the Debtors' Estates are not substantively consolidated in accordance with this Article IV.A, then (1) the Plan shall be deemed to constitute a separate sub-plan for each of the Debtors and each Class of Claims against or Interests in the Debtors shall be deemed to constitute separate sub-Classes of Claims against and Interests in each of the Debtors, as applicable, (2) the confirmation requirements of section 1129 of the Bankruptcy Code must be satisfied separately with respect to each sub-plan, (3) any Claim against any of the Debtors shall be treated as a Claim only against the applicable Debtor, as applicable, for purposes of voting and Confirmation, (4) such Claims shall be administered as provided in the Plan, (5) the portion of the GUC Reserve available for distributions to Holders of General Unsecured Claims against each Debtor shall be equal to the proportion that the Allowed General Unsecured Claims against each Debtor bears to the aggregate amount of Allowed General Unsecured Claims against all of the Debtors; and (6) the Debtors shall not, nor shall they be required to, re-solicit votes with respect to the Plan, nor will the failure of the Court to approve limited substantive consolidation of the Debtors alter the distributions set forth in the Plan.

Notwithstanding the substantive consolidation provided for herein, nothing shall affect the obligation of each and every Debtor to pay the quarterly fees to the U.S. Trustee until such time as a particular Chapter 11 Case is closed, dismissed, or converted.

B. Sources of Consideration for Plan Distributions

The Debtors' Cash on hand, the Sale Proceeds, the Priority Claims Reserve, the Other Secured Claims Reserve, the GUC Reserve, the Debtors' rights under the Purchase Agreement, all Causes of Action not previously settled, released, or exculpated under the Plan, and the remainder of the Post-Effective Date Debtor Assets, if any, shall be used to fund the distributions to Holders of Allowed Claims against the Debtors in accordance with the treatment of such Claims and subject to the terms provided herein.

C. General Settlement of Claims

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies resolved pursuant to the Plan.

D. Credit Facility Claims

Effective as of the Effective Date, the Debtors' obligations under the Credit Documents shall be deemed terminated, canceled, and released. In full and final satisfaction, settlement, and release of and in exchange for each Holder's Allowed Credit Facility Claim, on the Effective Date or as soon as reasonably practicable thereafter, the Debtors or the Plan Administrator, as the case may be, may take such actions, in their sole discretion, to execute and deliver such other and further documents as may be reasonably requested by the Credit Facility Agent.

E. Post-Effective Date Debtor

On or prior to the Effective Date, the Post-Effective Date Debtor shall continue in existence for purposes of (1) winding down the Debtors' businesses and affairs as expeditiously as reasonably possible, (2) resolving Disputed Claims, (3) paying Allowed Priority Tax Claims, Allowed Administrative Claims (including but not limited to Professional Fee Claims), Allowed Priority Claims, Allowed Credit Facility Claims, Allowed Other Secured Claims, Allowed General Unsecured Claims held by Participating GUC Holders, and Cure Claims, (4) establishing and funding the Distribution Reserve Accounts, (5) enforcing and prosecuting claims, interests, rights, and privileges under the Post-Effective Date Debtor Causes of Action in an efficacious manner and only to the extent the benefits of such enforcement or prosecution are reasonably believed to outweigh the costs associated therewith, (6) filing appropriate tax returns, and (7) administering the Plan in an efficacious manner. The Post-Effective Date Debtor shall be deemed to be substituted as the party-in-lieu of the Debtors in all matters, including (a) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court, and (b) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Plan Administrator to file motions or substitutions of parties or counsel in each such matter.

On the Effective Date, the Post-Effective Date Debtor Assets shall vest in the Post-Effective Date Debtor for the purpose of liquidating the Estates and Consummating the Plan. The Post-Effective Date Debtor Assets shall be held free and clear of all liens, claims, and interests of Holders of Claims and Interests, except as otherwise provided in the Plan. Any distributions to be made under the Plan from the Post-Effective Date Debtor Assets shall be made by the Plan Administrator or its designee(s). Notwithstanding anything herein to the contrary, the Post-Effective Date Debtor and the Plan Administrator shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

F. Plan Administrator

The Plan Administrator shall act for the Post-Effective Date Debtor in the same fiduciary capacity as applicable to a board of managers and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same). On the Effective Date, the authority, power, and incumbency of the persons acting as managers and officers of the Post-Effective Date Debtor shall be deemed to have resigned, and a representative of the Plan Administrator shall be appointed as the sole manager and sole officer of the Post-Effective Date Debtor and shall succeed to the powers of the Post-Effective Date Debtor's managers and officers. From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Post-Effective Date Debtor as further described in Article VII hereof.

G. Cancellation of Securities and Agreements

On the Effective Date, except as otherwise specifically provided for in the Plan: (1) the obligations of any Debtor under any certificate, share, note, bond, indenture, purchase right, or other instrument or document, including, without limitation, the Credit Documents and the Convertible Notes, directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest, equity, or portfolio interest in the Debtors or any warrants, options, or other securities exercisable or exchangeable for, or convertible into, debt, equity, ownership, or profits interests in the Debtors giving rise to any Claim or Interest shall be cancelled and deemed surrendered as to the Debtors and shall not have any continuing obligations thereunder; and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificates or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indenture, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors shall be fully released, settled, and compromised; *provided* that, notwithstanding Confirmation or the occurrence of the Effective Date, any such agreement that governs the rights of the Holder of a Claim shall continue in effect solely for purposes of (a) allowing such Holders to receive distributions under the Plan as provided herein and (b) preserving all rights and obligations not released pursuant to Article X of the Plan as between non-Debtor Entities bound thereunder (including any indemnity obligations that a Holder of a Claim or Interest may owe to another Holder); *provided, further*, that the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan or result in any expense or liability to the Post-Effective Date Debtor, except to the extent set forth in or provided for under this Plan; *provided further* that,

notwithstanding the foregoing and anything contained in the Plan, the applicable provisions of the Convertible Notes Indenture will continue in effect solely for the purposes of (i) allowing the Indenture Trustee to make distributions on account of the Convertible Notes and (ii) permitting the Indenture Trustee to maintain or assert any rights or charging liens it may have on distributions to holders of Convertible Notes pursuant to the terms of the Convertible Notes Indenture.

On and after the Effective Date, all duties and responsibilities of the Credit Facility Agent under the Credit Facility and the Indenture Trustee under the Convertible Notes Indenture, as applicable, shall be discharged unless otherwise specifically set forth in or provided for under the Plan or the Plan Supplement.

H. Corporate Action

Upon the Effective Date, by virtue of the solicitation of votes in favor of the Plan and entry of the Confirmation Order, all actions contemplated by the Plan (including any action to be undertaken by the Plan Administrator) shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, the Debtors, or any other Entity or Person. All matters provided for in the Plan involving the corporate structure of the Debtors, and any corporate action required by the Debtors in connection therewith, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Debtors or the Debtors' Estates.

Upon the Effective Date or as soon as reasonably practicable thereafter, after making all distributions provided for under the Plan, the Debtors shall be deemed to have been dissolved and terminated.

Upon the Effective Date or as soon as reasonably practicable thereafter, the existing boards of directors and managers, as applicable, of the Debtors shall be dissolved without any further action required on the part of the Debtors or the Debtors' officers, directors, shareholders, and members and any all remaining officers or directors of each Debtor shall be dismissed without any further action required on the part of any such Debtor, the shareholders of such Debtor, or the officers and directors of such Debtor. The directors, managers, and officers of the Debtors and the Plan Administrator, as applicable, shall be authorized to execute, deliver, File, or record such contracts, instruments, and other agreements or documents and take such other actions as they may deem necessary or appropriate in their sole discretion to implement the provisions of this Article IV.H.

The authorizations and approvals contemplated by this Article IV.H shall be effective notwithstanding any requirements under applicable nonbankruptcy law.

I. Release of Liens

On the Effective Date, all Liens on any property of any Debtors or any Reorganized Debtors shall automatically terminate, all Collateral subject to such Liens shall be automatically released, and all guarantees of any Debtors or any Reorganized Debtors shall be automatically discharged and released; *provided* that such Liens shall attach to Cash in the applicable Distribution Reserve Accounts, as provided in this Plan or the Confirmation Order.

J. Effectuating Documents; Further Transactions

Prior to the Effective Date, the Debtors are, and on and after the Effective Date, the Plan Administrator, and the officers and members thereof are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

K. Exemption from Certain Taxes and Fees

To the maximum extent provided by section 1146(a) of the Bankruptcy Code, any post-Confirmation transfer from any Entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (1) the

issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors; or (2) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instruments of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, in each case to the extent permitted by applicable bankruptcy law, and the appropriate state or local government officials or agents shall forego collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

L. Causes of Action

Other than Causes of Action against an Entity that are waived, relinquished, exculpated, released, compromised, or settled under the Plan or any Final Order (including, for the avoidance of doubt, any claims or Causes of Action released pursuant to Article X.D hereof), the Debtors reserve and, as of the Effective Date, assign to the Post-Effective Date Debtor the Causes of Action, which shall include, for the avoidance of doubt, those Causes of Action identified as being retained in the Plan Supplement. On and after the Effective Date, the Plan Administrator may pursue the Causes of Action on behalf of and for the benefit of the applicable Beneficiaries. On the Effective Date, all Avoidance Actions shall be deemed waived, relinquished, and extinguished, and no Avoidance Actions shall revert to creditors of the Debtors.

No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any such Cause of Action against them as any indication that the Debtors or the Plan Administrator will not pursue any and all available Causes of Actions against them. No preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The Debtors or the Post-Effective Date Debtor, as applicable, reserve such Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. Prior to the Effective Date, the Debtors, and on and after the Effective Date, the Plan Administrator, shall retain and shall have, including through their authorized agents or representatives, the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

M. Closing the Chapter 11 Cases

Upon the occurrence of the Effective Date, the Plan Administrator shall be permitted to close all of the Chapter 11 Cases except for the Chapter 11 Case of Parent, and all contested matters relating to each of the Debtors, including objections to Claims, shall be administered and heard in the Chapter 11 Case of Emerald Oil, Inc.

When all Disputed Claims have become Allowed or Disallowed and all remaining Cash has been distributed in accordance with the Plan, the Plan Administrator shall seek authority from the Bankruptcy Court to close the Chapter 11 Case of Parent in accordance with the Bankruptcy Code and the Bankruptcy Rules.

ARTICLE V.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Assignment of Executory Contracts and Unexpired Leases

On the Effective Date, except as otherwise provided herein, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including, without limitation, any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be assumed or assumed and assigned to the Purchaser or another third party, as applicable, in connection with the Sale Transaction; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; (5) is a D&O Policy; or (6) is the Purchase Agreement. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

B. BLM Leases

On May 10, 2016, the BLM entered a decision requiring the shutdown of the Debtors' Clark Griswold Federal 3-7-20H, Noonan Federal 3-18-19H, and Greg Marmalard 3-28-33H wells and termination of the Debtors' BLM leases on account of the Debtors' alleged failure to maintain wells capable of producing crude oil and natural gas in paying quantities. On June 10, 2016, the Debtors filed a Notice of Appeal and Petition for Stay of the Decision with the United States Department of Interior's Office of hearings and Appeals seeking to reinstate the BLM Leases. Upon the date that the BLM Leases are reinstated, the Plan Administrator shall be authorized to take any and all appropriate steps to transfer such BLM Leases to the Purchaser in accordance with the Sale Order.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases

Any Cure Obligations under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Obligation in Cash on the Effective Date or as soon as reasonably practicable thereafter, subject to the limitation described below, by the Debtors as an Administrative Claim or by Purchaser in accordance with the Purchase Agreement, as applicable, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of the Cure Obligation, (2) the ability of the Debtors' Estates or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, the Cure Obligations required by section 365(b)(1) of the Bankruptcy Code shall be satisfied following the entry of a Final Order or orders resolving the dispute and approving the assumption.

Unless otherwise provided by an order of the Bankruptcy Court, at least 14 days before the Confirmation Hearing, the Debtors shall cause notice of proposed assumption and proposed Cure Obligations to be sent to applicable counterparties. Any objection by such counterparty must be Filed, served, and actually received by the Debtors not later than seven days after service of notice of the Debtors' proposed assumption and associated Cure Obligations. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or cure amount will be deemed to have assented to such assumption or Cure Obligation.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan, or otherwise, shall result in the full release and satisfaction of any Claims or defaults, subject to satisfaction of the Cure Obligations, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the effective date of assumption and/or assignment. **Any liabilities reflected in the Schedules and any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed and assigned shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.**

D. Claims Based on Rejection of Executory Contracts and Unexpired Leases

Unless otherwise provided by an order of the Bankruptcy Court, any Proofs of Claim based on the rejection of the Debtors' Executory Contracts or Unexpired Leases pursuant to the Plan or otherwise, must be Filed with Bankruptcy Court and served on the Debtors or, after the Effective Date, the Plan Administrator, as applicable, no later than 30 days after the earlier of the Effective Date or the effective date of rejection of such Executory Contract or Unexpired Lease. In addition, any objection to the rejection of an Executory Contract or Unexpired Lease must be Filed with the Bankruptcy Court and served on the Debtors or, after the Effective Date, the Plan Administrator, as applicable, no later than 14 days after service of the Debtors' proposed rejection of such Executory Contract or Unexpired Lease.

Any Holders of Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claims were not timely Filed shall not (1) be treated as a creditor with respect to such Claim, (2) be permitted to vote to accept or reject the Plan on account of any Claim arising from such rejection, or (3) participate in any distribution in the Chapter 11 Cases on account of such Claim, and any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically Disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Debtors' Estates, the Post-Effective Date Debtor, or the property for any of the foregoing without the need for any objection by the Debtors or the Plan Administrator, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Debtors' prepetition Executory Contracts or prepetition Unexpired Leases shall be classified as General Unsecured Claims against the appropriate Debtor, or upon the Effective Date, the Post-Effective Date Debtor, except as otherwise provided by order of the Bankruptcy Court.

E. Purchase Agreement; Assumed Contracts

The Debtors' assumption or rejection of any Executory Contract or Unexpired Lease pursuant to the Plan shall be subject in all respects to the Purchaser's rights and obligations, including any Cure Obligations assumed by the Purchaser in accordance with the Purchase Agreement, with respect to any such Executory Contracts or Unexpired Leases that constitute Assumed Contracts (as defined in the Purchase Agreement) as set forth in the Purchase Agreement.

F. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise provided in the Plan, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors or the Debtors on behalf of the Debtors' Estates during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith, absent a Bankruptcy Court order to the contrary.

G. D&O Policies

The D&O Policies shall be assumed by the Debtors on behalf of the applicable Debtor and assigned to the Post-Effective Date Debtor effective as of the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such insurance policy previously was rejected by the Debtors or the Debtors' Estates pursuant to a Bankruptcy Court order or is the subject of a motion to reject pending on the Effective Date, and coverage for defense and indemnity under any of the D&O Policies shall remain available to all individuals within the definition of "Insured" in any of the D&O Policies.

H. Indemnification Obligations

Subject to the occurrence of the Effective Date, the obligations of the Debtors as of the Effective Date to indemnify, defend, reimburse, or limit the liability of the current and former directors, officers, employees, attorneys, other professionals and agents of the Debtors, and such current and former directors' and officers' respective Affiliates, respectively, against any Claims or Causes of Action under the Indemnification Provisions or applicable law, shall survive Confirmation, shall be assumed by the Debtors on behalf of the applicable Debtor and assigned to the Post-Effective Date Debtor which shall be deemed to have assumed the obligation, and will remain in effect after the Effective Date if such indemnification, defense, reimbursement, or limitation is owed in connection with an event occurring before the Effective Date; *provided* that, notwithstanding anything herein to the contrary, the Post-Effective Date Debtor's obligation to fund such indemnification obligations shall be limited to the extent of coverage available under any insurance policy assumed by the Debtors and assigned to the Post-Effective Date Debtor, including the D&O Policies.

I. Reservation of Rights

Neither the exclusion nor inclusion of any contract or lease on Schedule G of the Debtors' Schedules or in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtors' Estates have any liability thereunder. In the event of a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Plan Administrator, as applicable, shall have 90 days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease as otherwise provided in the Plan.

J. Nonoccurrence of Effective Date

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases of nonresidential real property pursuant to section 365(d)(4) of the Bankruptcy Code.

ARTICLE VI.

PROVISIONS GOVERNING DISTRIBUTIONS

A. Timing and Calculation of Amounts to Be Distributed

Unless otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or, if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes Allowed or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim against the Debtors shall receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class from the Debtors or the Plan Administrator on behalf of the Debtors, as applicable. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, in which case such payment shall be deemed to have occurred when due. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article IX hereof. Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim shall, on account of such Allowed Claim, receive a distribution in excess of the Allowed amount of such Claim plus any interest accruing on such Claim that is actually payable in accordance with the Plan.

B. Rights and Powers of the Debtors and the Plan Administrator

1. Powers of the Debtors and the Plan Administrator

Except as otherwise set forth herein, all distributions under the Plan shall be made on the Effective Date or as soon as reasonably practicable thereafter by the Debtors or the Plan Administrator (or its designee(s)), the timing of which shall be subject to the reasonable discretion of the Debtors or the Plan Administrator, as applicable.

On and after the Effective Date, the Plan Administrator and its designees or representatives shall have the right to object to, Allow, or otherwise resolve any General Unsecured Claim, Priority Claim, or Other Secured Claim, subject to the terms hereof.

The Debtors and the Plan Administrator, as applicable, shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Plan Administrator is so ordered after the Effective Date, all costs and expenses of procuring any such bond or surety shall be paid for with Cash from the Plan Administrator Expense Reserve.

2. Expenses Incurred On or After the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Plan Administrator on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including attorney fees and expenses) made by the Plan Administrator in connection with such Plan Administrator's duties shall be paid without any further notice to or action, order, or approval of the Bankruptcy Court in Cash from the Plan Administrator Expense Reserve if such amounts relate to any actions taken hereunder.

C. Delivery of Distributions and Undeliverable or Unclaimed Distributions

1. Record Date for Distribution

On the Distribution Record Date, the Claims Register shall be closed and the Debtors, the Plan Administrator, or any other party responsible for making distributions shall instead be authorized and entitled to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date. The Distribution Record Date shall not apply to the Indenture Trustee with respect to beneficial holders of the Convertible Notes.

2. Distributions to Beneficial Holders of the Convertible Notes

Notwithstanding any provision of the Plan to the contrary, distributions to beneficial holders of the Convertible Notes shall be made to or at the direction of the Indenture Trustee, which shall act as disbursing agent for distributions to the beneficial holders of the Convertible Notes under the Convertible Notes Indenture. The Indenture Trustee may transfer or direct the transfer of such distributions directly through the facilities of DTC (whether by means of book-entry exchange, free delivery, or otherwise) and will be entitled to recognize and deal for all purposes under the Plan with beneficial holders of Convertible Notes to the extent consistent with the customary practices of DTC. Such distributions shall be subject in all respects to the right of the Indenture Trustee to assert its charging lien under the Convertible Notes Indenture against such distributions. All distributions to be made to beneficial holders of Convertible Notes shall be eligible to be distributed through the facilities of DTC and as provided for under the Convertible Notes Indenture.

3. Delivery of Distributions in General

(a) Payments and Distributions on Disputed Claims

Distributions made after the Effective Date to Holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall, in the reasonable discretion of the Plan

Administrator, be deemed to have been made by the Plan Administrator on the Effective Date unless the Plan Administrator and the Holder of such Claim agree otherwise.

(b) Special Rules for Distributions to Holders of Disputed Claims

Notwithstanding any provision otherwise in the Plan and except as may be agreed to by, as applicable, the Debtors or the Plan Administrator, as applicable, on the one hand, and the Holder of a Disputed Claim, on the other hand, no partial payments and no partial distributions shall be made with respect to any Disputed Claim, other than with respect to Professional Claims, until all Disputed Claims held by the Holder of such Disputed Claim have become Allowed Claims or have otherwise been resolved by settlement or Final Order.

(c) Distributions

On and after the Effective Date, the Debtors or the Plan Administrator, as applicable, shall make the distributions required to be made on account of Allowed Claims under the Plan. Any distribution that is not made on the Initial Distribution Date or on any other date specified in the Plan because the Claim that would have been entitled to receive that distribution is not an Allowed Claim on such date, shall be held by the Plan Administrator in the Priority Claims Reserve, the GUC Reserve, or any other reserve established by the Plan Administrator in accordance with the Plan, as applicable, and distributed on the next Subsequent Distribution Date that occurs after such Claim is Allowed. In accordance with Article VI.E hereof, no interest shall accrue or be paid on the unpaid amount of any distribution paid pursuant to the Plan.

4. Minimum; De Minimis Distributions

No Cash payment of less than \$50.00, in the reasonable discretion of the Debtors or the Plan Administrator, as applicable, shall be made to a Holder of an Allowed Claim on account of such Allowed Claim.

5. Undeliverable Distributions and Unclaimed Property

In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Debtors or the Plan Administrator, as applicable, has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided* that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of three months from the date the initial distribution is made. After such date, all unclaimed property or interests in property shall revert (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) to the Post-Effective Date Debtor automatically and without need for a further Order by the Bankruptcy Court for distribution in accordance with the Plan and the Claim of any Holder to such property or interest in property shall be released, settled, compromised, and forever barred; *provided* that such unclaimed property or interests in property on account of Priority Claims, Other Secured Claims, and General Unsecured Claims shall be allocated to the General Account.

6. Manner of Payment Pursuant to the Plan

Any payment in Cash to be made pursuant to the Plan shall be made at the election of the Debtors or the Plan Administrator, as applicable, by check or by wire transfer.

D. Compliance with Tax Requirements/Allocations

In connection with the Plan and all distributions hereunder, to the extent applicable, the Debtors or the Plan Administrator, as applicable, are authorized to take any and all actions that may be necessary or appropriate to comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant hereto shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Plan Administrator shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of a distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding

distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms it believes are reasonable and appropriate. The Plan Administrator and the Debtors reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens and encumbrances. All Persons holding Claims shall be required to provide any information necessary to effect information reporting and the withholding of such taxes. Notwithstanding any other provision of the Plan to the contrary, each Holder of an Allowed Claim shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution.

E. Allocation of Plan Distributions Between Principal and Interest

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest as Allowed therein.

F. Setoffs and Recoupment

Except as otherwise expressly provided herein, the Debtors or the Post-Effective Date Debtor, may, but shall not be required to, setoff against or recoup from any Claims of any nature whatsoever that the Debtors or the Post-Effective Date Debtor may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Post-Effective Date Debtor of any such Claim it may have against the Holder of such Claim.

G. No Postpetition Interest on Claims

Unless otherwise specifically provided for in an order of the Bankruptcy Court, the Plan, or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims or Interests and no Holder of a Claim or Interest shall be entitled to interest accruing on or after the Petition Date on any such Claim.

H. Claims Paid or Payable by Third Parties

1. Claims Paid by Third Parties; Recourse to Collateral

The Debtors or the Plan Administrator, as applicable, shall be authorized to reduce in full a Claim, and such Claim shall be Disallowed without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor, as applicable, including on account of recourse to collateral held by third parties that secure such Claim. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the applicable Debtor, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

2. Claims Payable by Insurance, Third Parties; Recourse to Collateral

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies, surety agreements, other non-Debtor payment agreements, or collateral held by a third party, until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy, surety agreement, other non-Debtor payment agreement, or collateral, as applicable. To the extent that one or more of the Debtors' insurers, sureties, or non-Debtor payors pays or satisfies in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), or such collateral or proceeds from such collateral is

used to satisfy such Claim, then immediately upon such payment, the applicable portion of such Claim shall be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies

Notwithstanding anything to the contrary in the Plan or Confirmation Order, Confirmation and Consummation of the Plan shall not limit or affect the rights of any third-party beneficiary or other covered party of any of the Debtor's insurance policies with respect to such policies, including the D&O Policies.

ARTICLE VII.

THE PLAN ADMINISTRATOR

A. *The Plan Administrator*

The powers of the Plan Administrator shall include any and all powers and authority to implement the Plan and to administer and distribute the Distribution Reserve Accounts and wind down the businesses and affairs of the Debtors and the Post-Effective Date Debtor, including: (1) liquidating, receiving, holding, and investing, supervising, and protecting the Post-Effective Date Debtor Assets; (2) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan from the Distribution Reserve Accounts; (3) making distributions from the Distribution Reserve Accounts as contemplated under the Plan; (4) establishing and maintaining bank accounts in the name of the Post-Effective Date Debtor; (5) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (6) paying all reasonable fees, expenses, debts, charges, and liabilities of the Post-Effective Date Debtor; (7) administering and paying taxes of the Post-Effective Date Debtor, including filing tax returns; (8) representing the interests of the Post-Effective Date Debtor or the Estates before any taxing authority in all matters, including any action, suit, proceeding or audit; and (9) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan.

The Plan Administrator may resign at any time upon 30 days' written notice delivered to the Bankruptcy Court, *provided* that such resignation shall only become effective upon the appointment of a permanent or interim successor Plan Administrator. Upon its appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor and all responsibilities of the predecessor Plan Administrator relating to the Post-Effective Date Debtor shall be terminated.

1. Appointment of the Plan Administrator

The Plan Administrator shall be appointed by the Debtors in consultation with the Lenders and the Committee. The Plan Administrator shall retain and have all the rights, powers and duties necessary to carry out his or her responsibilities under this Plan, and as otherwise provided in the Confirmation Order. The Plan Administrator shall be the exclusive trustee of the Post-Effective Date Debtor Assets for the purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estates appointed pursuant to Bankruptcy Code § 1123(b)(3)(B).

2. Retention of Professionals

The Plan Administrator shall have the right to retain the services of attorneys, accountants, and other professionals that, in the discretion of the Plan Administrator, are necessary to assist the Plan Administrator in the performance of his or her duties. The reasonable fees and expenses of such professionals shall be paid by the Post-Effective Date Debtor from the Plan Administrator Expense Reserve upon the monthly submission of statements to the Plan Administrator. The payment of the reasonable fees and expenses of the Plan Administrator's retained professionals shall be made in the ordinary course of business from the Post-Effective Date Debtor Assets, and shall not be subject to the approval of the Bankruptcy Court.

3. Compensation of the Plan Administrator

The Plan Administrator's compensation, on a post-Effective Date basis, shall be as described in the Plan Supplement and shall be paid out of the Plan Administrator Expense Reserve.

4. Plan Administrator Expenses

All costs, expenses and obligations incurred by the Plan Administrator in administering this Plan, the Post-Effective Date Debtor, or in any manner connected, incidental or related thereto, in effecting distributions from the Post-Effective Date Debtor thereunder (including the reimbursement of reasonable expenses) shall be a charge against the Post-Effective Date Debtor Assets remaining from time to time in the hands of the Plan Administrator. Such expenses shall be paid as they are incurred without the need for Bankruptcy Court approval. All costs, expenses and obligations incurred by the GUC Oversight Representative shall be paid by the Plan Administrator from the Plan Administrator Expense Reserve, *provided* such costs, expenses and obligations shall not exceed \$50,000.

5. Plan Administrator Oversight

The Plan Administrator shall consult with (x) the Lenders with regard to the settlement of any Claims and (y) the GUC Oversight Representative with regard to the settlement of any General Unsecured Claims.

The Plan Administrator shall provide the GUC Oversight Representative with an update each month regarding all settlements and payments on account of General Unsecured Claims.

B. Wind-Down

On and after the Effective Date, the Plan Administrator will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court, and the Plan Administrator shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.

As soon as practicable after the Effective Date, the Plan Administrator shall: (1) cause the Debtors to comply with, and abide by, the terms of the Purchase Agreement; (2) file for each of the Debtors, except the Post-Effective Date Debtor, a certificate of dissolution or equivalent document, together with all other necessary corporate and company documents, to effect the dissolution of the Debtors under the applicable laws of their state of incorporation or formation (as applicable), including, but not limited to, any actions contemplated in Sections 275–283 of the DGCL; and (3) take such other actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. For purposes of clause (2) of the preceding sentence, the Plan shall constitute a plan of distribution as contemplated in the DGCL. The certificate of dissolution or equivalent document may be executed by the Plan Administrator without need for any action or approval by the shareholders or Board of Directors of any Debtor. From and after the Effective Date, except with respect to Holdings as set forth herein, the Debtors (4) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (5) shall be deemed to have cancelled pursuant to this Plan all Interests, and (6) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. For the

avoidance of doubt, except with respect to Holdings as set forth herein, (7) notwithstanding the Debtors' dissolution, the Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

The filing of the final monthly report (for the month in which the Effective Date occurs) and all subsequent quarterly reports shall be the responsibility of the Plan Administrator.

C. Exculpation; Indemnification; Insurance; Liability Limitation

The Plan Administrator, all professionals retained by the Plan Administrator, the GUC Oversight Representative, and representatives of each of the foregoing, each in their capacities as such, shall be deemed exculpated and indemnified, except for fraud, willful misconduct, or gross negligence, in all respects by the Post-Effective Date Debtor. The Plan Administrator may obtain, at the expense of the Post-Effective Date Debtor and with funds from the Plan Administrator Expense Reserve, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Post-Effective Date Debtor. The Plan Administrator may rely upon written information previously generated by the Debtors.

For the avoidance of doubt, notwithstanding anything to the contrary contained herein, the Plan Administrator and the GUC Oversight Representative, each in their capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors.

D. Tax Returns

After the Effective Date, the Plan Administrator shall complete and file all final or otherwise required federal, state, and local tax returns for each of the Debtors, and, pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of such Debtor or its Estate for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws.

E. Dissolution of the Post-Effective Date Debtor

Upon a certification to be Filed with the Bankruptcy Court by the Plan Administrator of all distributions having been made and completion of all its duties under the Plan and entry of a final decree closing the last of the Chapter 11 Cases, the Post-Effective Date Debtor shall be deemed to be dissolved without any further action by the Post-Effective Date Debtor, including the filing of any documents with the secretary of state for the state in which the Post-Effective Date Debtor is formed or any other jurisdiction. The Plan Administrator, however, shall have authority to take all necessary actions to dissolve the Post-Effective Date Debtor in and withdraw the Post-Effective Date Debtor from applicable state(s).

ARTICLE VIII.

RESERVES ADMINISTERED BY THE PLAN ADMINISTRATOR

A. Establishment of Reserve Accounts

The Plan Administrator shall establish each of the Distribution Reserve Accounts (which, notwithstanding anything to the contrary contained in this Plan, may be affected by either establishing a segregated account or establishing book entry accounts, in the sole discretion of the Plan Administrator).

B. Undeliverable Distribution Reserve

1. Deposits

If a Distribution to any Holder of an Allowed Claim is returned to the Plan Administrator as undeliverable or is otherwise unclaimed, such Distribution shall be deposited in a segregated, interest-bearing account, designated

as an “Undeliverable Distribution Reserve,” for the benefit of such Holder until such time as such Distribution becomes deliverable, is claimed or is deemed to have been forfeited in accordance with Article VIII.B.2 of this Plan.

2. Forfeiture

Any Holder of an Allowed Claim that does not assert a Claim pursuant to this Plan for an Undeliverable or Unclaimed Distribution within three months after the first Distribution is made to such Holder shall be deemed to have forfeited its claim for such Undeliverable or Unclaimed Distribution and shall be forever barred and enjoined from asserting any such claim for the Undeliverable or Unclaimed Distribution against any Debtor, any Estate, the Plan Administrator, the Post-Effective Date Debtor, or their respective properties or assets. In such cases, any Cash or other property held by the Post-Effective Date Debtor in the Undeliverable Distribution Reserve for distribution on account of such claims for Undeliverable or Unclaimed Distributions, including the interest that has accrued on such Undeliverable or Unclaimed Distribution while in the Undeliverable Distribution Reserve, shall become the property of the Post-Effective Date Debtor, notwithstanding any federal or state escheat laws to the contrary, and shall be available for immediate distribution by the Post-Effective Date Debtor; *provided* that any Undeliverable or Unclaimed Distribution on account of an Allowed General Unsecured Claim shall be transferred to the GUC Reserve.

3. Disclaimer

The Plan Administrator and his or her respective agents and attorneys are under no duty to take any action to either (i) attempt to locate any Claim Holder, or (ii) obtain an executed Internal Revenue Service Form W-9 from any Claim Holder *provided* that in his or her sole discretion, the Plan Administrator may periodically publish notice of Unclaimed Distributions.

4. Distribution from Reserve

Within fifteen (15) Business Days after the Holder of an Allowed Claim satisfies the requirements of this Plan, such that the distribution(s) attributable to its Claim is no longer an Undeliverable or Unclaimed Distribution (provided that satisfaction occurs within the time limits set forth in Article VIII.B.2 of this Plan), the Plan Administrator shall distribute out of the Undeliverable Distribution Reserve the amount of the Undeliverable or Unclaimed Distribution attributable to such Claim, including the interest that has accrued on such Undeliverable or Unclaimed Distribution while in the Undeliverable Distribution Reserve to the General Account.

C. *Priority Claims Reserve*

On the Effective Date, the Plan Administrator shall establish the Priority Claims Reserve by depositing from the Post-Effective Date Debtor Assets Cash in the amount of the Priority Claims Reserve Amount. The Priority Claims Reserve Amount shall be used to pay Allowed Priority Claims. If all or any portion of a Priority Claim shall become a Disallowed Claim, then the amount on deposit in the Priority Claims Reserve attributable to such surplus or such Disallowed Claim, including the interest that has accrued on said amount while on deposit in the Priority Claims Reserve, shall remain in the Priority Claims Reserve to the extent that the Plan Administrator determines necessary to ensure that the Cash remaining in the Priority Claims Reserve is sufficient to ensure that all Allowed Priority Claims will be paid in accordance with the Plan.

D. *Plan Administrator Expense Reserve*

On the Effective Date, the Plan Administrator shall deposit Cash from the Post-Effective Date Debtor Assets into the Plan Administrator Expense Reserve in the amount of the Plan Administrator Expense Reserve Amount. The funds constituting the Plan Administrator Expense Reserve are to be used by the Plan Administrator solely to satisfy the expenses of the Post-Effective Date Debtor and the Plan Administrator as set forth in the Plan; *provided* that all costs and expenses associated with the winding up of the Post-Effective Date Debtor and the storage of records and documents shall constitute expenses of the Post-Effective Date Debtor and shall be paid from the funds held in the Plan Administrator Expense Reserve. In no event shall the Plan Administrator be required or permitted to use its personal funds or assets for such purposes.

E. Other Secured Claims Reserve

On the Effective Date, the Plan Administrator shall establish the Other Secured Claims Reserve by depositing from the Post-Effective Date Debtor Assets Cash in the amount of the Other Secured Claims Reserve Amount. The Other Secured Claims Reserve Amount shall be used to pay Allowed Other Secured Claims. If all or any portion of an Other Secured Claim shall become a Disallowed Claim, then the amount on deposit in the Other Secured Claims Reserve attributable to such surplus or such Disallowed Claim, including the interest that has accrued on said amount while on deposit in the Other Secured Claims Reserve, shall remain in the Other Secured Claims Reserve or be transferred out of the Other Secured Claims Reserve to the extent that the Plan Administrator determines necessary to ensure that the Cash remaining in the Other Secured Claims Reserve is sufficient to ensure that all Allowed Other Secured Claims will be paid in accordance with the Plan.

F. GUC Reserve

On the Effective Date, the Plan Administrator shall establish and thereafter maintain the GUC Reserve in a separate, segregated account by depositing from the Post-Effective Date Debtor Assets Cash in the amount of the GUC Reserve Amount. The GUC Reserve Amount shall be used to pay Allowed General Unsecured Claims held by Participating GUC Holders. If all or any portion of a General Unsecured Claim shall become a Disallowed Claim, then the amount on deposit in the GUC Reserve attributable to such surplus or such Disallowed Claim, including the interest that has accrued on said amount while on deposit in the GUC Reserve, shall remain in the GUC Reserve and be distributed to holders of Allowed General Unsecured Claims held by Participating GUC Holders in accordance with the Plan.

The Post-Effective Date Debtor shall not have any reversionary or other interest in or with respect to any of the GUC Reserve Amount. Notwithstanding anything to the contrary herein, neither the Plan Administrator, the Post-Effective Date Debtor nor any other party in interest shall be obligated to fund the GUC Reserve in an aggregate amount in excess of the GUC Reserve Amount.

G. The General Account and Distribution Reserve Account Adjustments

On the Effective Date, the Post Effective Date Debtor Assets (except for the Distribution Reserve Accounts) shall be transferred to the General Account. Beginning on the first anniversary of the Effective Date and thereafter, on each anniversary of the Effective Date, the Plan Administrator shall determine the amount of Cash required to adequately maintain each of the Distribution Reserve Accounts. Other than with respect to amounts held in the GUC Reserve, if after making and giving effect to any determination referred to in the immediately preceding sentence, the Plan Administrator determines that any Distribution Reserve Account (i) contains Cash in an amount in excess of the amount then required to adequately maintain such Distribution Reserve Account, then at any such time the Plan Administrator shall transfer such surplus Cash to the General Account for distribution to the Lenders, or (ii) does not contain Cash in an amount sufficient to adequately maintain such Distribution Reserve Account, then at any such time the Plan Administrator shall transfer Cash from the General Account to the extent Cash is available in the General Account until the deficit in such Distribution Reserve Account is eliminated.

ARTICLE IX.

**PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED, AND DISPUTED CLAIMS AND INTERESTS**

A. Allowance of Claims and Interests

Prior to the Effective Date, the Debtors, and on and after the Effective Date, the Plan Administrator, shall have and shall retain any and all rights and defenses that the Debtors had with respect to any Claim immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim unless and until such Claim is deemed Allowed pursuant to the Plan or a Final Order, including the Confirmation Order (when it becomes a Final Order), allowing such Claim.

B. Claims and Interests Administration Responsibilities

Except as otherwise specifically provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, on and after the Effective Date, the Plan Administrator by order of the Bankruptcy Court, shall have the sole authority, in consultation with the Lenders with regard to all Claims and the GUC Oversight Representative with regard to General Unsecured Claims: (1) to File, withdraw, or litigate to judgment objections to Claims; (2) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

C. Estimation of Claims

On and after the Effective Date, the Plan Administrator, may, at any time, request that the Bankruptcy Court estimate any Disputed Claim or Disputed Interest that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the Claims Register, but that has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Disputed, contingent, or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the Debtors or the Plan Administrator may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors or the Plan Administrator, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on account of such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before 21 days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

D. Adjustment to Claims Register Without Objection

Any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtors or the Plan Administrator without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

E. Time to File Objections to Claims

Any objections to Claims shall be Filed on or before the Claims Objection Bar Date, as such may be extended pursuant to the terms of the Plan.

F. Disallowance of Claims

To the maximum extent provided by section 502(d) of the Bankruptcy Code, any Claims held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors or the Plan Administrator. All Proofs of Claim Filed on account of an indemnification obligation to a director, officer, or employee shall be deemed satisfied

and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order, or approval of the Bankruptcy Court.

G. Amendments to Claims

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Plan Administrator and any such new or amended Claim Filed without such prior authorization shall be deemed Disallowed in full and expunged without any further action, order, or approval of the Bankruptcy Court.

H. No Distributions Pending Allowance

If an objection to a Claim or portion thereof is Filed as set forth in Article IX, no payment or distribution provided under the Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim.

I. Distributions After Allowance

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of a court of competent jurisdiction allowing any Disputed Claim becomes a Final Order, the Plan Administrator shall provide to the Holder of such Claim the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, less any previous distribution (if any) that was made on account of the undisputed portion of such Claim, without any interest, dividends, or accruals to be paid on account of such Claim unless required under applicable bankruptcy law or as otherwise provided in Article III.B.

J. Single Satisfaction of Claims

Holders of Allowed Claims may assert such Claims against the Debtors obligated with respect to such Claims, and such Claims shall be entitled to share in the recovery provided for the applicable Class of Claims against the Debtors based upon the full Allowed amount of such Claims. Notwithstanding the foregoing, in no case shall the aggregate value of all property received or retained under the Plan on account of any Allowed Claim exceed 100 percent of the underlying Allowed Claim plus applicable interest, if any.

ARTICLE X.

SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

A. Compromise and Settlement of Claims, Interests, and Controversies

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Plan Administrator may compromise and settle Claims against, and Interests in, the Debtors and their Estates and Causes of Action against other Entities.

B. Term of Injunctions or Stays

Unless otherwise provided herein or in a Final Order, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 362 of the Bankruptcy Code or otherwise and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

C. Release of Liens

Except as otherwise specifically provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtors and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors. In addition, the Credit Facility Agent shall execute and deliver all documents reasonably requested by the Debtors or Plan Administrator to evidence the release of such mortgages, deeds of trust, Liens, pledges, and other security interests and shall authorize the Debtors to file UCC-3 termination statements (to the extent applicable) with respect thereto.

D. Debtor Release

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, on and after the Effective Date, the Released Parties are deemed expressly, unconditionally, generally, and individually and collectively, forever acquitted, released, and discharged by the Debtors, and the Estates, each on behalf of itself and its predecessors, successors and assigns, subsidiaries, affiliates, current and former officers, directors, principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors and other professionals, from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims asserted or assertable on behalf of the Debtors, any Claims asserted or assertable on behalf of any Holder of any Claim against or Interest in the Debtors and any Claims asserted or assertable on behalf of any other entity, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereinafter arising, in law, equity, contract, tort or otherwise, by statute or otherwise, that such releasing party (whether individually or collectively), ever had, now has or hereafter can, shall or may have, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring efforts, the Debtors' intercompany transactions (including dividends paid), any preference or avoidance claim pursuant to sections 544, 547, 548, and 549 of the Bankruptcy Code, the purchase, sale, or rescission of the purchase or sale of, or any other transaction relating to any security or other debt obligations of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is affected by or classified in the Plan, the business or contractual arrangements between the Debtors and the Released Parties, the restructuring of Claims and Interests before or during the Sale Transactions implemented by the Plan or any other transaction or other arrangement with the Debtors whether before or during the Sale Transactions, the negotiation, formulation, or preparation of the Sale Transactions, the Plan, the Plan Supplement, the Disclosure Statement, or any related agreements, any asset purchase agreement, instruments or other documents (including, for the avoidance of doubt, providing any legal opinion requested by any entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement, the Plan, the Chapter 11 Cases, the Filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of Securities or other debt obligations pursuant to the Plan, or the distribution of property under the Plan, or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place or arising on or before the Effective Date related or relating to any of the foregoing, except for any act

or omission that constitutes actual fraud, gross negligence or willful misconduct as determined by a Final Order of a court of competent jurisdiction; *provided* that nothing in the foregoing shall result in any of the Debtors' officers and directors waiving any indemnification Claims against the Debtors or any of their insurance carriers or any rights as beneficiaries of any insurance policies, which indemnification obligations and insurance policies shall be assumed by the Post-Effective Date Debtor. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under the Plan, any of the Sale Transactions, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

E. Third Party Release

Except as otherwise provided in the Plan, as of the Effective Date and to the fullest extent authorized by applicable law, each Releasing Party expressly, unconditionally, generally and individually and collectively forever releases, acquits, and discharges the Debtors, and the Released Parties from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative Claims asserted or assertable on behalf of the Debtors, any Claims asserted or assertable on behalf of any Holder of any Claim against or Interest in the Debtors and any Claims asserted or assertable on behalf of any other entity, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereinafter arising, in law, equity, contract, tort or otherwise, by statute or otherwise, that such Releasing Party (whether individually or collectively), ever had, now has or hereafter can, shall or may have, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring efforts, the Debtors' intercompany transactions (including dividends paid), any preference or avoidance claim pursuant to sections 544, 547, 548, and 549 of the Bankruptcy Code, the purchase, sale, or rescission of the purchase or sale of any security or other debt obligation of the Debtors, or any other transaction relating to any security or other debt obligation of the Debtors, or any other transaction or other arrangement with the Debtors whether before or during the Sale Transactions, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is affected by or classified in the Plan, the business or contractual arrangements between the Debtors and the Released Parties, the restructuring of Claims and Interests before or during the Sale Transactions implemented by the Plan, the negotiation, formulation or preparation of the Sale Transactions, the Plan, the Plan Supplement, the Disclosure Statement, or any related agreements, any asset purchase agreement, instruments or other documents (including, for the avoidance of doubt, providing any legal opinion requested by any entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement, the Plan, the Chapter 11 Cases, the Filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of Securities or other debt obligation pursuant to the Plan, or the distribution of property under the Plan, or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place or arising on or before the Effective Date related or relating to any of the foregoing, except for any act or omission that constitutes actual fraud, gross negligence or willful misconduct as determined by a Final Order of a court of competent jurisdiction; *provided* that nothing in the foregoing shall result in any of the Debtors' officers and directors waiving any indemnification Claims against the Debtors or any of their insurance carriers or any rights as beneficiaries of any insurance policies, which indemnification obligations and insurance policies shall be assumed by the Post-Effective Date Debtor. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under the Plan, any of the Sale Transactions, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

F. Exculpation

The Exculpated Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with the Chapter 11 Cases, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, or implementing the Plan or consummating the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act

taken or omitted to be taken in connection with or in contemplation of the restructuring, sale or liquidation of the Debtors, except for claims related to any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, or gross negligence; *provided* that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement. Without limiting the foregoing “Exculpation” provided under this Article VIII.F, the rights of any Holder of a Claim or Interest to enforce rights arising under the Plan shall be preserved, including the right to compel payment of distributions in accordance with the Plan.

G. *Injunction*

Except as otherwise provided in the plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, Causes of Action, or liabilities that: (1) are subject to compromise and settlement pursuant to the terms of the Plan; (2) have been released pursuant to Article X.D hereof; (3) have been released pursuant to Article X.E hereof; (4) are subject to exculpation pursuant to Article X.F hereof; or (5) are otherwise stayed or terminated pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from: (A) commencing or continuing in any manner any action or other proceeding of any kind, including on account of any Claims, Interests, Causes of Actions, or liabilities that have been compromised or settled against the debtors, the Post-Effective Date Debtor, or any Entity so released or exculpated (or the property or estate of any Entity, directly or indirectly, so released or exculpated) on account of or in connection with or with respect to any released, settled, compromised, or exculpated Claims, equity Interests, Causes of Action, or liabilities; (B) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against the debtors, the Post-Effective Date Debtor, or any Entity so released or exculpated (or the property or estate of the debtors or any Entity so released or exculpated) on account of or in connection with or with respect to any such released, settled, compromised, or exculpated Claims, equity Interests, Causes of Action, or liabilities; (C) creating, perfecting, or enforcing any lien, claim, or encumbrance of any kind against the debtors, the Post-Effective Date Debtor, or any Entity so released or exculpated (or the property or estate of the debtors or any Entity so released or exculpated) on account of or in connection with or with respect to any such released, settled, compromised, or exculpated Claims, equity Interests, Causes of Action, or liabilities; (D) asserting any right of setoff or subrogation of any kind against any obligation due from the Debtors or any Entity so released or exculpated (or the property or estate of the debtors or any Entity so released or exculpated) on account of or in connection with or with respect to any such released, settled, compromised, or exculpated Claims, equity Interests, Causes of Action, or liabilities unless such Entity has timely asserted such setoff or subrogation right prior to confirmation in a document Filed with the Bankruptcy Court explicitly preserving such setoff or subrogation; and (e) commencing or continuing in any manner any action or other proceeding of any kind against the debtors, the Post-Effective Date Debtor, or any Entity so released or exculpated (or the property or estate of the debtors or any Entity so released or exculpated) on account of or in connection with or with respect to any such released, settled, compromised, or exculpated Claims, equity Interests, Causes of Action, or liabilities released, settled, or compromised pursuant to the Plan; *provided* that nothing contained in the Plan shall preclude an Entity from obtaining benefits directly and expressly provided to such Entity pursuant to the terms of the Plan; *provided, further*, that nothing contained in the Plan shall be construed to prevent any Entity from defending against Claims, objections, or collection actions whether be asserting a right of setoff or otherwise to the extent permitted by law.

H. *Recoupment*

In no event shall any Holder of Claims or Interests be entitled to recoup any Claim against any claim, right, or Cause of Action of the Debtors, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

I. *Subordination Rights*

Any distributions under the Plan to Holders shall be received and retained free from any obligations to hold or transfer the same to any other Holder and shall not be subject to levy, garnishment, attachment, or other legal

process by any Holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

ARTICLE XI.

SUBSTANTIAL CONSUMMATION OF THE PLAN

A. Conditions Precedent to Consummation of the Plan

It shall be a condition to Consummation of the Plan that the following conditions have been satisfied or waived pursuant to the provisions of Article XI.B hereof:

1. the Bankruptcy Court shall have entered the Confirmation Order, prepared in consultation with the Committee and the Lenders and in form and substance materially consistent with the Plan in all respects;
2. the Plan Administrator shall have been appointed;
3. all documents and agreements necessary to implement the Plan shall have (a) been tendered for delivery and (b) been effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements;
4. the Priority Claims Reserve shall have been established and funded;
5. the Professional Fee Escrow shall have been established and funded;
6. the Other Secured Claims Reserve shall have been established and funded;
7. the Plan Administrator Expense Reserve shall have been established and funded; and
8. the GUC Reserve shall have been established and funded.

On the Effective Date, the Plan shall be deemed substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

B. Waiver of Conditions

The conditions to Consummation of the Plan set forth in Article XI.A hereof may be waived by the Debtors.

C. Substantial Consummation

“Substantial Consummation” of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

D. Effect of Non-Occurrence of Conditions to the Effective Date

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by or Claims against or Interests in the Debtors; (2) prejudice in any manner the rights of the Debtors, the Debtors' Estates, any Holders, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, the Debtors' Estates, any Holders, or any other Entity in any respect.

ARTICLE XII.

MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

A. Modification and Amendments

Subject to the limitations contained in the Plan, upon consultation with the Committee and the Lenders, the Debtors reserve the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors expressly reserve their rights to alter, amend, or modify materially the Plan with respect to the Debtors, upon consultation with the Committee and the Lenders, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII hereof.

B. Effect of Confirmation on Modifications

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of the Plan

The Debtors reserve the right to revoke or withdraw the Plan, including the right to revoke or withdraw the Plan for any Debtor or all Debtors, prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan with respect to any Debtor, or if Confirmation or Consummation does not occur with respect to any Debtor, then: (1) the Plan with respect to such Debtor shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan with respect to such Debtor (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan with respect to such Debtor, and any document or agreement executed pursuant to the Plan with respect to such Debtor, shall be deemed null and void; and (3) nothing contained in the Plan with respect to such Debtor shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtors, the Debtors' Estates, or any other Entity; or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by the Debtors, the Debtors' Estates, or any other Entity.

ARTICLE XIII.

RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters, arising out of, or related to, the Chapter 11 Cases and the Plan, including jurisdiction to:

9. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;

10. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

11. resolve any matters related to: (a) the assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, Cure Costs pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Debtors or the Plan Administrator amending, modifying, or supplementing, after the Effective Date, pursuant to Article V hereof, any Executory Contracts or Unexpired Leases set forth on the list of Executory Contracts and Unexpired Leases to be assumed and assigned or rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

12. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

13. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

14. adjudicate, decide, or resolve any and all matters related to Causes of Action;

15. adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

16. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

17. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

18. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

19. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

20. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, releases, injunctions, exculpations, and other provisions contained in Article X hereof and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

21. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VI.C.1 hereof;

22. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

23. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement;

24. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

25. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

26. determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

27. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

28. hear and determine all disputes involving the existence, nature, or scope of the release provisions set forth in the Plan, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

29. enforce all orders previously entered by the Bankruptcy Court;

30. hear any other matter not inconsistent with the Bankruptcy Code;

31. enter an order concluding or closing the Chapter 11 Cases;

32. enforce the Purchase Agreement; and

33. enforce the injunction, release, and exculpation provisions set forth in Article X hereof.

ARTICLE XIV.

MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect

Subject to the terms hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtors, the Debtors' Estates, the Plan Administrator, and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

B. Additional Documents

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors and all Holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. Dissolution of Committee

On the Effective Date, the Committee shall dissolve and members thereof shall be compromised, settled, and released from all rights and duties from or related to the Chapter 11 Cases, except the Committee will remain intact solely with respect to (x) the preparation, filing, review, and resolution of applications for Professional Fee Claims and (y) any appeal of the Confirmation Order. The Debtors and the Post-Effective Date Debtor shall have no obligation to pay any fees or expenses incurred after the Effective Date by the Committee or the Committee Members other than with respect to (x) the preparation, filing, review, and resolution of applications for Professional Fee Claims and (y) any appeal of the Confirmation Order.

D. Reservation of Rights

Neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtors or any Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtors or any Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

E. Successors and Assigns

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

F. Service of Documents

Any pleading, notice, or other document required by the Plan to be served on or delivered to the following entities and shall be served via first class mail, overnight delivery, or messenger on.

If to the Debtors or Post-Effective Date Debtor, to:

Emerald Oil, Inc.
200 Columbine Street, Suite 500
Denver, Colorado 80206
Attn: James Muchmore

with copies to:

Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attn: Ryan Blaine Bennett and Travis M. Bayer

Pachulski Stang Ziehl & Jones LLP
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, Delaware 19899-8705 (Courier 19801)
Attn: Laura Davis Jones

If to the Plan Administrator, to:

Opportune LLP
711 Louisiana Street, Suite 3100
Houston, Texas 77002
Attn: Wade Stubblefield

If to the Committee, to:

Akin Gump Strauss Hauer & Feld LLP
1 Bryant Park
New York, New York 10036
Attn: David Botter

with copies to:

Whiteford, Taylor & Preston, LLC
The Renaissance Centre
405 North King Street, Suite 500
Wilmington, Delaware 19801
Attn: Christopher M. Samis

G. Entire Agreement

Except as otherwise indicated, the Plan, the Confirmation Order, and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

H. Nonseverability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall not alter or interpret such term or provision to make it valid or enforceable, *provided* that at the request of the Debtors (in their sole discretion), the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such terms or provision shall then be applicable as altered or interpreted provided that any such alteration or interpretation shall be acceptable to the Debtors. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtors; and (3) nonseverable and mutually dependent.

I. Votes Solicited in Good Faith

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties or individuals will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan and any previous plan.

J. Waiver or Estoppel

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court before the Confirmation Date.

[Signature Page Follows]

Respectfully submitted, as of the date first set forth above,

Emerald Oil, Inc.

By: /s/ Wade Stubblefield
Name: Wade Stubblefield
Title: Chief Restructuring Officer