

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	)	
	)	Chapter 11
	)	
WESTMORELAND COAL COMPANY, <i>et al.</i> , <sup>1</sup>	)	Case No. 18-35672 (DRJ)
	)	
Debtors.	)	(Jointly Administered)
	)	

**SOLICITATION AND VOTING PROCEDURES**

**PLEASE TAKE NOTICE THAT** on [●], 2018, the United States Bankruptcy Court for the Southern District of Texas (the “Court”) entered an order (the “Disclosure Statement Order”): (a) authorizing Westmoreland Coal Company and certain of its affiliates, other than the WMLP Debtors, as debtors and debtors in possession (collectively, the “WLB Debtors”),<sup>2</sup> to solicit votes on the *Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (as modified, amended, or supplemented from time to time, the “Plan”); (b) approving the *Disclosure Statement for the Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (the “Disclosure Statement”) as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the “Solicitation Packages”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

**A. The Voting Record Date.**

The Court has established **December 13, 2018**, as the record date for purposes of determining which holders of Claims in Class 3 (First Lien Secured Claims) and Class 4 (General Unsecured Claims) are entitled to vote on the Plan (the “Voting Record Date”). Accordingly, only Holders of First Lien Secured Claims and General Unsecured Claims as of such date are entitled to vote on the Plan.

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<sup>1</sup> Due to the large number of debtors in these chapter 11 cases, which are being jointly administered for procedural purposes, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the claims and noticing agent in these chapter 11 cases at [www.donlinrecano.com/westmoreland](http://www.donlinrecano.com/westmoreland). Westmoreland Coal Company’s service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Plan, the Disclosure Statement, or the Disclosure Statement Order.

**B. The Voting Deadline.**

The Court has established **January 25, 2019, at 4:00 p.m., prevailing Central Time, or three (3) days following the Auction, if the Auction occurs after January 22, 2019**, as the voting deadline (the “Voting Deadline”) for the Plan. The WLB Debtors may extend the Voting Deadline, with the reasonable consent of the Required Consenting Stakeholders and subject to the RSA and the orders approving the WLB Debtors’ postpetition financing facility, without further order of the Court. To be counted as votes to accept or reject the Plan, all ballots (the “Ballots”)<sup>3</sup> must be properly executed, completed, and delivered by: (1) first class mail (using the reply envelope provided in the Solicitation Package or otherwise); (2) overnight courier; (3) personal delivery; or (4) via electronic mail so that they are *actually received* by the Notice and Claims Agent, in any case, no later than the Voting Deadline. The Ballots will clearly indicate the appropriate return address, or, in the case of Beneficial Holder Ballots, such Beneficial Holders (as defined herein) will be instructed to comply with the return instructions provided by the Nominee (as defined herein).

**C. Form, Content, and Manner of Notices.**

**1. The Solicitation Package.**

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

- a. a copy of these Solicitation and Voting Procedures;
- b. the approved Disclosure Statement annexed as **Schedule 1** to the Disclosure Statement Order (and exhibits thereto, including the Plan);
- c. the applicable form of Ballot, in substantially the forms of the Ballots annexed as **Schedules 3A, 3B, 3C, and 3D** to the Disclosure Statement Order, as applicable;
- d. a cover letter, in substantially the form annexed as **Schedule 7** to the Disclosure Statement Order, describing the contents of the Solicitation Package and urging the holders of Claims in each of the Voting Classes to vote to accept the Plan;
- e. the *Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Filed By Westmoreland Coal Company and Certain Debtor Affiliates and Related Voting and Objection Deadlines*, in substantially the form annexed as **Schedule 8** to the Disclosure Statement Order (the “Confirmation Hearing Notice”);

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<sup>3</sup> For the avoidance of doubt, the defined term Ballots includes the First Lien Claim ballots, the First Lien Claim nominee ballots (the “Master Ballots”), the First Lien Claim beneficial noteholder ballots (the “Beneficial Holder Ballots”), and the General Unsecured Claims ballots (the “General Unsecured Ballots”).

- f. a letter from the Committee, in substantially the form annexed as **Schedule 12** to the Disclosure Statement Order, setting forth the Committee's views on the Plan;
- g. a pre-addressed, postage pre-paid reply envelope; and
- h. any other materials the Court has approved as part of the Solicitation Package.

**2. Distribution of the Solicitation Package.**

The Solicitation Package shall provide the Plan, the Disclosure Statement, and the Disclosure Statement Order (without exhibits except the Solicitation and Voting Procedures) in electronic format (i.e., CD-ROM or flash drive format), and all other contents of the Solicitation Package, including Ballots, shall be provided in paper format. Any party that receives the materials in electronic format, but would prefer paper format may contact Donlin, Recano & Company, Inc. (the "Notice and Claims Agent") by: (a) calling the Notice and Claims Agent at (800) 499-8519 (U.S. and Canada) or (212) 771-1128 (International); (b) visiting the WLB Debtors' restructuring website at: <http://www.donlinrecano.com/westmoreland>; (c) writing to the Notice and Claims Agent at Donlin, Recano & Company, Inc., Re: Westmoreland Coal Company, et al., 6201 15th Avenue, Brooklyn, New York 11219; and/or (d) emailing [westmorelandinfo@donlinrecano.com](mailto:westmorelandinfo@donlinrecano.com) and requesting paper copies of the corresponding materials previously received in electronic format (to be provided at the WLB Debtors' expense).

The WLB Debtors shall serve or cause to be served all of the materials in the Solicitation Package (excluding the Ballots) on the U.S. Trustee and all parties who have requested service of papers in this case pursuant to Bankruptcy Rule 2002 as of the Voting Record Date. In addition, the WLB Debtors shall mail or cause to be mailed the Solicitation Package to all holders of Claims in the Voting Classes who are entitled to vote as described in Section D below, on or before five business days after the entry of the Disclosure Statement Order.<sup>4</sup>

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

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

- a. Absent a further order of the Court, the holder of a Claim that is in a Voting Class and is the subject of a pending objection on a "reduce and allow" basis shall be entitled to vote such Claim in the reduced amount contained in such objection.

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<sup>4</sup> Beneficial Holder Ballots will be distributed to Nominees approximately seven (7) days after the initial solicitation mailing in accordance with customary solicitation procedures.

- b. If a Claim in a Voting Class is subject to an objection other than a “reduce and allow” objection that is filed with the Court on or prior to seven (7) days before the Voting Deadline:
  - (i) the WLB Debtors shall cause the applicable holder to be served with a Disputed Claim Notice, substantially in the form annexed as **Schedule 6** to the Disclosure Statement Order (which notice shall be served together with such objection); such notice will instruct these holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots), as well as how they may opt out of the third-party releases set forth in Article IX.E of the Plan (the “Third Party Releases”);
  - (ii) the WLB Debtors shall cause the applicable holder to be served with an *Opt Out Form for Disputed Claim Holders*, substantially in the form annexed as **Schedule 6A** to the Disclosure Statement Order; and
  - (iii) the applicable holder shall not be entitled to vote to accept or reject the Plan on account of such claim unless a Resolution Event (as defined herein) occurs as provided herein.
- c. If a Claim in a Voting Class is subject to an objection other than a “reduce and allow” objection that is filed with the Court less than seven (7) days prior to the Voting Deadline, the applicable Claim shall be deemed temporarily allowed for voting purposes only, without further action by the holder of such Claim and without further order of the Court, unless the Court orders otherwise.
- d. A “Resolution Event” means the occurrence of one or more of the following events no later than two (2) business days prior to the Voting Deadline:
  - i. an order of the Court is entered allowing such Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;
  - ii. an order of the Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
  - iii. a stipulation or other agreement is executed between the holder of such Claim and the WLB Debtors resolving the objection and allowing such Claim in an agreed upon amount; or
  - iv. the pending objection is voluntarily withdrawn by the objecting party.
- e. No later than one (1) business day following the occurrence of a Resolution Event, the WLB Debtors shall cause the Notice and Claims Agent to distribute via email, hand delivery, or overnight courier service a Solicitation Package and a pre-addressed, postage pre-paid envelope to the

relevant holder to the extent such holder has not already received a Solicitation Package containing a Ballot.

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

Certain holders of Claims that are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code or who are not entitled to vote because they are Unimpaired or otherwise presumed to accept the Plan under section 1126(f) of the Bankruptcy Code will receive the *Notice of Non-Voting Status to Holders of Unimpaired Claims Conclusively Presumed to Accept the Plan*, substantially in the form annexed as **Schedule 4** to the Disclosure Statement Order. Such notice will instruct these holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots), as well as how they may opt out of the Third Party Releases provided by the Plan. The holders of such Claims will also receive an *Opt-Out Form for Holders of Unimpaired Claims Conclusively Presumed to Accept the Plan*, substantially in the form annexed as **Schedule 4A** to the Disclosure Statement Order. The holders of such Claims and Interests will also receive the *Confirmation Hearing Notice*, substantially in the form annexed as **Schedule 8** to the Disclosure Statement Order, and the *Committee Letter*, substantially in the form annexed as **Schedule 12** to the Disclosure Statement Order.

Certain holders of Claims and Interests who are not entitled to vote because they are deemed to reject the Plan under section 1126(g) of the Bankruptcy Code will receive the *Notice of Non-Voting Status to Holders of Impaired Claims and Equity Interests Deemed to Reject the Plan*, substantially in the form annexed as **Schedule 5** to the Disclosure Statement Order. Such notice will instruct these holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots), as well as how they may opt out of the Third Party Releases provided by the Plan. The holders of such Claims and Interests will also receive an *Opt-Out Form for Holders of Impaired Claims and Equity Interests Deemed to Reject the Plan*, substantially in the form annexed as **Schedule 5A** to the Disclosure Statement Order. In addition, holders of Claims and Interests in the classes deemed to reject the Plan will also receive the Disclosure Statement (together with the Plan attached as **Exhibit A** thereto). The holders of such Claims and Interests will also receive the *Confirmation Hearing Notice*, substantially in the form annexed as **Schedule 8** to the Disclosure Statement Order, and the *Committee Letter*, substantially in the form annexed as **Schedule 12** to the Disclosure Statement Order.

**5. Notices in Respect of Executory Contracts and Unexpired Leases.**

Counterparties to Executory Contracts and Unexpired Leases that receive a supplemental notice of assumption or notice of rejection, substantially in the forms attached as **Schedule 10** and **Schedule 11** to the Disclosure Statement Order, respectively, may file an objection to the WLB Debtors' proposed assumption, assumption and assignment, rejection, and/or cure cost, as applicable, as set forth in such documents. Such objections must be *actually received* as set forth in the notice of assumption or notice of rejection.

**D. Voting and Tabulation Procedures.**

**1.  Holders of Claims Entitled to Vote.**

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

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

- g. any holders of Claims who have filed or purchased duplicate Claims within the same Voting Class shall be provided with only one Solicitation Package and one ballot for voting a single Claim in such Class, regardless of whether the WLB Debtors have objected to such duplicate Claims; and
- h. holders of Claims filed in an amount of \$0.00 are not entitled to vote.

**2. Establishing Claim Amounts for Voting Purposes.**

**Class 3 Claims.** The Claims amount of Class 3 Claims based on First Lien Secured Claims of lenders under the WLB Debtors' prepetition term loan facility due 2020 (the "WLB Term Loan Facility") for voting purposes only will be established through the administrative agent under the WLB Term Loan Facility in the amount of the applicable positions held as of the Voting Record Date, by such lender as evidenced by the records of the administrative agent of the WLB Term Loan Facility. The Claims amount of Class 3 Claims based on First Lien Secured Claims of holders of the WLB Debtors' 8.75% senior secured notes due 2022 (the "WLB Senior Secured Notes") who are directly registered and Beneficial Holders<sup>5</sup> for voting purposes only will be established through the indenture trustee or applicable Nominees, as the case may be, in the amount of the applicable positions held as of the Voting Record Date, by such registered holder as evidenced by records of the indenture trustee or by the applicable Nominees holding First Lien Claims as evidenced by the securities position report(s) from The Depository Trust Company.

**Class 4 Claims.** The Claims amount of Class 4 Claims based on General Unsecured Claims (including the First Lien Deficiency Claims) for voting purposes only will be established based on the amount of the applicable positions held by such Class 4 Claim holder as of the Voting Record Date, as evidenced by (a) the WLB Debtors' applicable books and records, and (b) the claims register maintained in the chapter 11 cases.

**Allocation of First Lien Claims Into Class 3 Claims and Class 4 Claims.** The Notice and Claims Agent shall allocate the claim amount of First Lien Claims on each applicable Ballot into the Class 3 First Lien Secured Claims and Class 4 General Unsecured Claims in accordance with the applicable provisions of the Plan.

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

- a. the Claim amount (i) settled and/or agreed upon by the WLB Debtors, as reflected in a document filed with the Court, including the Plan, (ii) set forth

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<sup>5</sup> A "Beneficial Holder" means a beneficial owner of publicly-traded securities whose claims have not been satisfied prior to the Voting Record Date (as defined herein) pursuant to court order or otherwise, as reflected in the records maintained by the Nominees holding through an indenture trustee or as evidenced by the securities position report from the Depository Trust Company.

in an order of the Court, or (iii) set forth in a document executed by the WLB Debtors pursuant to authority granted by the Court;

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

### **3. Voting and Ballot Tabulation Procedures.**

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

- a. except as otherwise provided in the Solicitation and Voting Procedures, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline (as the same may be extended by the WLB Debtors), the



WLB Debtors shall reject such Ballot as invalid and, therefore, shall not count it in connection with confirmation of the Plan;

- b. the Notice and Claims Agent will file with the Court by no later than one week before the Confirmation Hearing, a voting report (the “Voting Report”). The Voting Report shall, among other things, delineate every Ballot that does not conform to the Solicitation and Voting Procedures or that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or lacking necessary information, received via facsimile or damaged (collectively, in each case, the “Irregular Ballots”). The Voting Report shall indicate the WLB Debtors’ decision with regard to each Irregular Ballot;
- c. the method of delivery of Ballots to be sent to the Notice and Claims Agent is at the election and risk of each holder, and except as otherwise provided, a Ballot will be deemed delivered only when the Notice and Claims Agent actually receives the executed Ballot;
- d. an executed Ballot is required to be submitted by the Entity submitting such Ballot (except with respect to Master Ballots submitted by Nominees). Delivery of a Ballot to the Notice and Claims Agent by facsimile or any electronic means other than as expressly approved by the Disclosure Statement Order or these Solicitation and Voting Procedures will not be valid;<sup>6</sup>
- e. no Ballot should be sent to the WLB Debtors, the WLB Debtors’ agents (other than the Notice and Claims Agent), or the WLB Debtors’ financial or legal advisors, and, if so sent, will not be counted;
- f. if multiple Ballots are received from the same holder with respect to the same Claim prior to the Voting Deadline, the last properly executed Ballot timely received will be deemed to reflect that voter’s intent and will supersede and revoke any prior received Ballot;
- g. Holders must vote all of their Claims within a particular Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, to the extent there are multiple Claims within the same Class, the applicable WLB Debtor may, in its discretion, aggregate the Claims of any particular holder within a Class for the purpose of counting votes;

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<sup>6</sup> For the avoidance of doubt, a Ballot may be submitted via electronic mail to the Notice and Claims Agent at WestmorelandVote@donlinrecano.com. For any Ballot cast via electronic mail, the format of the attachment must be found in the common workplace and industry standard format (i.e., industry-standard PDF file) and the received date and time in the Notice and Claims Agent’s inbox will be used as the timestamp for receipt.

- h. a person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a holder of Claims must indicate such capacity when signing;
- i. the WLB Debtors, subject to a contrary order of the Court, may waive any defects or irregularities as to any particular Irregular Ballot at any time, either before or after the close of voting, and any such waivers will be documented in the Voting Report;
- j. neither the WLB Debtors nor any other Entity will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report nor will any of them incur any liability for failure to provide such notification;
- k. unless waived or as ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;
- l. in the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted and/or rejected;
- m. subject to any order of the Court, the WLB Debtors reserve the right to reject any and all Ballots not in proper form, the acceptance of which, in the opinion of the WLB Debtors, would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules; *provided* that any such rejections will be documented in the Voting Report;
- n. if a Claim has been estimated or otherwise Allowed only for voting purposes by order of the Court, such Claim shall be temporarily Allowed in the amount so estimated or Allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;
- o. if an objection to a Claim is filed, such Claim shall be treated in accordance with the procedures set forth herein;
- p. the following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of such Claim; (ii) any Ballot cast by any Entity that does not hold a Claim in a Voting Class; (iii) any Ballot cast for a Claim scheduled as unliquidated, contingent, or disputed for which no Proof of Claim was timely filed by the Voting Record Date (unless the applicable bar date has not yet passed, in which case such Claim shall be entitled to vote in the amount of \$1.00); (iv) any unsigned Ballot or Ballot lacking an original signature; (v) any Ballot not marked to

accept or reject the Plan or marked both to accept and reject the Plan; and (vi) any Ballot submitted by any Entity not entitled to vote pursuant to the procedures described herein;

- q. after the Voting Deadline, no Ballot may be withdrawn or modified without the prior written consent of the WLB Debtors;
- r. the WLB Debtors are authorized to enter into stipulations with the holder of any Claim agreeing to the amount of a Claim for voting purposes; and
- s. where any portion of a single Claim has been transferred to a transferee, all holders of any portion of such single Claim will be (a) treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code (and for the other solicitation and voting procedures set forth herein), and (b) required to vote every portion of such Claim collectively to accept or reject the Plan. In the event that (a) a Ballot, (b) a group of Ballots within a Voting Class received from a single creditor, or (c) a group of Ballots received from the various holders of multiple portions of a single Claim partially reject and partially accept the Plan, such Ballots shall not be counted.

#### **4. Master Ballot Voting and Tabulation Procedures.**

In addition to the foregoing generally applicable voting and ballot tabulation procedures, the following procedures shall apply to holders of First Lien Secured Claims who hold their position through a broker, bank, or other nominee or an agent of a broker, bank, or other nominee (each of the foregoing, a “Nominee”):

- a. the Notice and Claims Agent shall distribute or cause to be distributed the appropriate number of copies of the Beneficial Holder Ballots to each Beneficial Holder of a First Lien Claim as of the Voting Record Date;
- b. Nominees identified by the Notice and Claims Agent as Entities through which Beneficial Holders hold their Claims will be provided with (i) Solicitation Packages for each Beneficial Holder represented by the Nominee as of the Voting Record Date, which will contain a Beneficial Holder Ballot for each Beneficial Holder, and (ii) a Master Ballot;
- c. any Nominee that is a holder of record with respect to a First Lien Claim shall vote on behalf of Beneficial Holders of such Claims by: (i) immediately, and in any event within five (5) Business Days after its receipt of the Solicitation Packages, and distributing the Solicitation Packages, including Beneficial Holder Ballots, it receives from the Notice and Claims Agent to all such Beneficial Holders;<sup>7</sup> (ii) providing such

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<sup>7</sup> Solicitation Packages may be sent in paper format or via electronic transmission in accordance with the customary requirements of each Nominee. Each Nominee will then distribute the Solicitation Packages, as appropriate, in accordance with their customary practices and obtain votes to accept or to reject the Plan also in accordance with

Beneficial Holders with a return address to send the completed Beneficial Holder Ballots; (iii) compiling and validating the votes and other relevant information of all such Beneficial Holders on the Master Ballot; and (iv) transmitting the Master Ballot to the Notice and Claims Agent on or before the Voting Deadline;

- d. any Beneficial Holder holding a First Lien Claim as a record holder in its own name shall vote on the Plan by completing and signing a Ballot and returning it directly to the Notice and Claims Agent on or before the Voting Deadline;
- e. any Beneficial Holder Ballot returned to a Nominee by a Beneficial Holder shall not be counted for purposes of accepting or rejecting the Plan until such Nominee properly completes and delivers to the Notice and Claims Agent a Beneficial Holder Ballot that reflects the vote of such Beneficial Holders on or before the Voting Deadline or otherwise validates the Beneficial Holder Ballot in a manner acceptable to the Notice and Claims Agent. Nominees shall retain all Beneficial Holder Ballots returned by Beneficial Holders for a period of one year after the Plan Effective Date;
- f. if a Beneficial Holder holds a First Lien Claim through more than one Nominee or through multiple accounts, such Beneficial Holder may receive more than one Beneficial Holder Ballot and each such Beneficial Holder should execute a separate Beneficial Holder Ballot for each block of First Lien Claim that it holds through any Nominee and must return each such Beneficial Holder Ballot to the appropriate Nominee;
- g. if a Beneficial Holder holds a portion of First Lien Claims through a Nominee or Nominees and another portion in its own name as the record holder, such Beneficial Holder should follow the procedures described in Section B herein to vote the portion held in its own name and the procedures described in Section D.4 herein to vote the portion held by the Nominee(s);
- h. votes cast by Beneficial Holders through Nominees will be applied to the applicable positions of First Lien Claims held by such Nominees, as of the Voting Record Date, as evidenced by the applicable securities position report(s) obtained from the Depository Trust Company. Votes submitted by a Nominee pursuant to a Master Ballot will not be counted in excess of the amount of such Claims held by such Nominee as of the Voting Record Date;
- i. if conflicting votes or “over-votes” are submitted by a Nominee pursuant to a Master Ballot, the WLB Debtors will use reasonable efforts to reconcile

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their customary practices. If it is the Nominee’s customary and accepted practice to submit a “voting instruction form” to the Beneficial Holders for the purpose of recording the Beneficial Holder’s vote, the Nominee will be authorized to send the voting instruction form in lieu of, or in addition to, a Beneficial Holder.

discrepancies with the Nominees. If over-votes on a Master Ballot are not reconciled prior to the preparation of the Voting Report, the WLB Debtors shall apply the votes to accept and to reject the Plan in the same proportion as the votes to accept and to reject the Plan submitted on the Master Ballot that contained the over-vote, but only to the extent of the Nominee's position in Class 3 and Class 4;

- j. for purposes of tabulating votes, each Nominee or Beneficial Holder will be deemed to have voted the amount of its Claims in Class 3 and Class 4, although any amounts may be adjusted by the Notice and Claims Agent to reflect the amount of the Claim actually voted, including prepetition interest;
- k. a single Nominee may complete and deliver to the Notice and Claims Agent multiple Master Ballots. Votes reflected on multiple Master Ballots will be counted, except to the extent that they are duplicative of other Master Ballots. If two or more Master Ballots are inconsistent, the latest received valid Master Ballot received prior to the Voting Deadline will, to the extent of such inconsistency, supersede and revoke any prior received Master Ballot. Likewise, if a Beneficial Holder submits more than one Beneficial Holder Ballot to its Nominee, (i) the latest received Beneficial Holder Ballot received before the submission deadline imposed by the Nominee shall be deemed to supersede any prior Beneficial Holder Ballot submitted by the Beneficial Holder, and (ii) the Nominee shall complete the Master Ballot accordingly; and
- l. the WLB Debtors will, upon written request, reimburse Nominees for customary mailing and handling expenses incurred by them in forwarding the Beneficial Holder Ballot and other enclosed materials to the Beneficial Holders for which they are the Nominee. No fees or commissions or other remuneration will be payable to any broker, dealer, or other person for soliciting Beneficial Holder Ballot with respect to the Plan.

**E. Amendments to the Plan and Solicitation and Voting Procedures.**

The WLB Debtors reserve the right, in consultation with counsel to the Consenting Stakeholders, to make non-substantive or immaterial changes to the Disclosure Statement, Plan, Ballots, Confirmation Hearing Notice, and related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors, if any, and to make conforming changes among the Disclosure Statement, the Plan, and any other materials in the Solicitation Package before their distribution.

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