

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

In re:

Activa Resources, LLC and  
Tiva Resources, LLC,

Debtors.

§  
§  
§ Case No. 22-50117  
§ Case No. 22-50118  
§  
§ Chapter 11  
§  
§ (Jointly Administered under  
§ Case No. 22-50117)

**DISCLOSURE STATEMENT FOR DEBTORS'  
THIRD AMENDED JOINT PLAN OF REORGANIZATION**

**LOEB & LOEB LLP**

Bernard R. Given II  
State Bar No. 07990180  
10100 Santa Monica Blvd., Suite 2200  
Los Angeles, CA 90067-4120  
Telephone: 310-282-2000  
Facsimile: 310-282-2200  
Email: [bgiven@loeb.com](mailto:bgiven@loeb.com)

-and-

Bethany D. Simmons (admitted *pro hac vice*)  
345 Park Avenue  
New York, NY 10154  
Telephone: 212-407-4000  
Facsimile: 212-407-4990  
Email: [bsimmosn@loeb.com](mailto:bsimmosn@loeb.com)

*Counsel for Debtors  
and Debtors in Possession*

TABLE OF CONTENTS

	<u>Page</u>
I. PREFATORY STATEMENT .....	1
II. INTRODUCTION .....	1
III. DISCLAIMERS .....	2
IV. EXECUTIVE OVERVIEW OF PLAN .....	4
V. OVERVIEW OF PLAN VOTING AND CONFIRMATION PROCEDURES .....	7
A. Voting Procedures and Requirements .....	7
B. Deadline for Objecting to Confirmation of the Plan .....	9
C. Time and Place of the Confirmation Hearing .....	9
D. Contact for More Information on the Plan .....	9
VI. HISTORY OF DEBTORS AND ONGOING OPERATIONS .....	10
A. Business Operations and Performance .....	10
B. Description of Debtors' Assets .....	11
1. OSR-Halliday Unit .....	11
2. Pruitt Project .....	12
3. Remaining Assets .....	13
4. Cash and other Current Assets .....	13
5. Causes of Action .....	14
C. Description of Debtors' Liabilities .....	14
1. Administrative and Fee Expenses (Unclassified) .....	14
2. DIP Claims (Unclassified) .....	14
3. Priority Tax Claims (Unclassified) .....	15
4. Class 1 (Priority Non-Tax) Claims .....	15
5. Class 2 (Secured Priority Tax) Claims .....	15
6. Class 3 (Allowed Secured Texas Capital Bank Claim) Claim .....	15
7. Class 4 (Allowed Secured Cargill Claim) Claim .....	15
8. Class 5 (Allowed Other Secured Claims) Claims .....	15
9. Class 6 (Allowed Operator Claims) Claims .....	15
10. Class 7 (General Unsecured Claims) Claims .....	16
11. Class 8 (Suspense Claims) Claims .....	16
12. Class 9 (Intercompany) Claims .....	16
13. Class 10 (Class A Interests) Interests .....	16
14. Class 11 (Class B Units) Interests .....	16
D. Ownership .....	17
E. Special Provision Governing Unimpaired Claims .....	17
VII. EVENTS LEADING TO CHAPTER 11 FILING .....	17
A. Circumstances Leading to the Commencement of the Chapter 11 Cases .....	17
B. Filing of the Chapter 11 Cases .....	19
VIII. SIGNIFICANT MATTERS IN THE BANKRUPTCY CASE .....	19
A. First Day Motions and Orders .....	19
B. Cash Collateral .....	19
C. Retention of Debtors' Professionals .....	20
D. Establishment of Bar Date .....	20
E. Assumption of Unexpired Leases and/or Executory Contracts .....	20
F. DIP Lending .....	21
G. Valuation of Debtors' Assets .....	21
IX. SUMMARY OF PLAN OF REORGANIZATION .....	22

## TABLE OF CONTENTS CONTINUED

	<u>Page</u>
A. Summary of Treatment of Claims and Interests .....	22
1. Description and Treatment of Unclassified Claims .....	22
2. Description of Classified Claims .....	25
3. Treatment of Classified Claims and Interests .....	25
B. Executory Contracts and Unexpired Leases .....	33
1. Assumption of Executory Contracts and Unexpired Leases.....	33
2. Cure of Defaults; Assignment of Executory Contracts and Unexpired Leases.....	34
3. Rejection of Executory Contracts and Unexpired Leases.....	35
4. Claims on Account of the Rejection of Executory Contracts and Unexpired Leases.....	35
5. Surety Bond Obligations.....	35
6. Extension of Time to Assume or Reject .....	36
7. Treatment of Certain Insurance Policies.....	36
C. Implementation of the Plan:.....	36
1. Vesting of Assets .....	36
2. Exit Financing: New Credit Facility .....	37
3. Performance Requirements.....	39
4. Post-Confirmation Sale.....	40
D. Survival of Activa and Tiva.....	41
E. Preservation of Causes of Action.....	41
F. Plan Distributions.....	42
1. Disputed Claims Procedures .....	42
2. Prosecution of Objections to Claims.....	42
3. Estimation of Claims.....	42
4. Deadline to File Objections to Claims.....	42
5. No Distribution Pending Allowance.....	43
6. Distributions on Account of Disputed Claims Once They Are Allowed and Additional Distributions of Account of Previously Allowed Claims .....	43
7. Disputed Claims Reserve.....	43
8. Provisions Governing Distributions.....	43
G. Discharge, Injunction, Indemnity, Exculpation .....	45
1. Discharge of Claims.....	45
2. Exculpation .....	46
3. Injunction .....	46
4. Binding Nature of Plan .....	47
5. Protection Against Discriminatory Treatment .....	47
H. Conditions to Effectiveness of Plan.....	48
I. Other Plan Provisions .....	48
1. Retention of Jurisdiction .....	48
2. Modification of Plan .....	48
3. Withdrawal or Revocation of Plan.....	49
4. Failure of Confirmation Date.....	49
5. Notices .....	49
6. Plan Controls.....	50

## TABLE OF CONTENTS CONTINUED

	<u>Page</u>
X. CONFIRMATION REQUIREMENTS .....	50
A. Acceptance of Plan .....	50
1. Who is Entitled to Vote.....	50
B. Non-Consensual (“Cramdown”) Confirmation .....	51
C. Objections to Confirmation.....	51
D. Feasibility.....	51
E. Best Interests of Creditors.....	52
XI. RISK FACTORS .....	53
XII. TAX CONSEQUENCES.....	54
A. Consequences to the Debtors.....	55
B. Consequence to holders of Claims.....	55
C. Withholding .....	56
D. Importance of Obtaining Professional Tax Assistance.....	56
XIII. FURTHER ACCESS TO INFORMATION IN THE BANKRUPTCY CASE .....	56
XIV. RECOMMENDATION AND CONCLUSION.....	56
TABLE OF EXHIBITS .....	i

## I. PREFATORY STATEMENT

Activa Resources, LLC and Tiva Resources, LLC, the debtors and debtors-in-possession in the above-captioned cases (the “**Debtors**” or “**Plan Proponents**”) provide this Disclosure Statement for Debtors’ Third Amended Joint Plan of Reorganization, as it may be amended, supplemented or modified (the “**Disclosure Statement**”) to all holders of Allowed Claims in order to permit them to make an informed decision in voting to accept or reject the Debtors’ Third Amended Joint Plan of Reorganization, dated November 16, 2022, as it may be amended, supplemented or modified (the “**Plan**”), filed by the Debtors as proponents of the Plan within the meaning of § 1129 of the Bankruptcy Code. A copy of the Plan is attached to this Disclosure Statement as **Exhibit A**.

Whenever the words “include,” “includes,” or “including” are used in this Disclosure Statement, they are deemed to be followed by the words “without limitation.”

Unless the context indicates otherwise, capitalized terms used but not defined in this Disclosure Statement have the meanings set forth in the Plan. Unless the context indicates otherwise, capitalized terms used but not defined in this Disclosure Statement or in the Plan have the meanings assigned to such terms by the Bankruptcy Code or the Bankruptcy Rules or, if none, by common usage. All exhibits to this Disclosure Statement are incorporated as if fully set forth herein and are a part of this Disclosure Statement.

## II. INTRODUCTION

This Disclosure Statement is presented to Claim holders owning Claims against the Debtors pursuant to § 1125 of Title 11 of the United States Code, as amended (the “**Bankruptcy Code**”), which requires that a disclosure statement provide information sufficient to enable a hypothetical and reasonable investor typical of the holders of Claims or Interests in these Chapter 11 Cases to make an informed judgment whether to accept or reject the Plan. The information contained in this Disclosure Statement, including the information regarding the history, businesses and operations of the Debtors, the financial information regarding the Debtors and the liquidation analysis relating to the Debtors, is included for purposes of soliciting acceptances of the Plan, but, as to contested matters and any adversary proceedings, is not to be construed as admissions or stipulations, but rather as statements made in settlement negotiations. This Disclosure Statement may not be relied upon for any other purpose.

This Disclosure Statement is based upon the following sources of information:

1. Information provided by the Debtors’ management based on information contained within the Debtors’ books and records, which information has not been audited;
2. Information that is publicly available in filings and pleadings filed with the Bankruptcy Court; and

Information contained in the Plan and that will be contained in the Plan Supplement.

The proposed Plan is one of reorganization. It provides for the vesting of the Debtors' assets into the Reorganized Debtors. The Plan proposes to accomplish payments to holders of Allowed Claims under the terms of the Plan by continuing the Debtors' business operations and by investing in drilling new wells to monetize the Debtors' oil and gas reserves, which will ultimately improve the value of the Debtors' oil and gas assets, enterprise value and net cash flows and allow the Debtors to refinance their secured debt with a new lender in approximately four years. The intent of the proposed Plan allows the Reorganized Debtors to operate for the benefit of the holders of Allowed Claims to accomplish the greatest possible value – full payments to holders of Allowed Claims. However, to the extent initial drilling in new wells is not successful or the new wells do not perform consistent with the Debtors' projections, the Reorganized Debtors' Assets will be sold and the proceeds of the sale will be used to satisfy the costs of sale and then will be distributed to holders of administrative and fee claims, if any remain unpaid by the time of the sale, followed by Allowed Claims against the Debtors on a *pro rata* basis consistent with the priority of the Allowed Claim.

### III. DISCLAIMERS

The Debtors strongly urge that each recipient carefully and completely review the contents of this Disclosure Statement, the Plan and all exhibits. Particular attention should be given to the provisions of the Plan affecting or impairing the rights of each holder of a Claim or Interest. Although the Bankruptcy Court will consider whether this Disclosure Statement contains sufficient information to enable Claim holders to make an informed judgment in exercising their right to vote, such approval does not constitute a guarantee by the Bankruptcy Court that the contents of this Disclosure Statement are accurate or a determination thereof as to the merits of the Plan.

This Disclosure Statement contains the only authorized statements or information by the Plan Proponents regarding the Debtors' financial condition and the Plan. This Disclosure Statement expressly supersedes all previous statements and representations.

The Plan is summarized under the heading "Executive Overview of Plan" and "Summary of Plan of Reorganization", but all summaries are qualified by the terms of the Plan itself, which are in all instances controlling. You may not rely upon this Disclosure Statement for any purpose other than to determine how to vote on the Plan. The Plan is proposed in good faith, and in compliance with the applicable provisions of the Bankruptcy Code. The Bankruptcy Court has not yet determined whether or not the Plan is confirmable and makes no recommendation as to voting on the Plan.

Nothing contained in the Plan or this Disclosure Statement shall constitute an admission of any fact or liability, or a waiver of any rights, by the Debtors or any other party, or be admissible in any proceeding involving the Debtors or any other party.

The statements contained in this Disclosure Statement are made as of the date hereof, unless another time is specified herein. The delivery of this Disclosure Statement shall not create

any implication that there has been no change in the facts set forth herein since the date of this Disclosure Statement and the materials relied upon in preparation of this Disclosure Statement were compiled. HOLDERS OF CLAIMS AND INTERESTS MUST RELY ON THEIR OWN EVALUATION OF THE DEBTORS AND THEIR OWN ANALYSIS OF THE TERMS OF THE PLAN IN DECIDING WHETHER TO ACCEPT OR REJECT THE PLAN.

ANY FINANCIAL INFORMATION CONTAINED HEREIN, UNLESS OTHERWISE INDICATED, IS UNAUDITED. This Disclosure Statement was prepared by the Plan Proponents based upon information available to them from numerous sources believed to be accurate to the best knowledge, information and belief of the Plan Proponents, including, without limitation, pleadings and documents filed by the Debtors in the above-captioned Chapter 11 Cases. ALTHOUGH REASONABLE, GOOD FAITH EFFORTS HAVE BEEN MADE UNDER THE CIRCUMSTANCES TO BE ACCURATE, THE DEBTORS AND THEIR PROFESSIONALS ARE UNABLE TO REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT IS ABSOLUTELY WITHOUT ERROR. However, this Disclosure Statement is true to the Plan Proponents' best knowledge, information and belief under the circumstances.

The Plan is based upon making payments to creditors, in part, from future revenues to be derived from the continued operation of the Debtors' oil and gas business. The Debtors have projected revenues and costs based upon their historical performance, the experience in the oil and gas business of John Hayes, the Debtors' President, recommendations and communications with operators and partners in the Debtors' projects, recommendations of the Debtors' professionals, and the audit of the Debtors' oil and gas reserves conducted by Haas Petroleum Engineering Services, Inc. ("Haas"). Recoveries could be significantly less than projected should the Reorganized Debtors encounter any of the inherent risks of oil and gas exploration, such as operational problems, labor and equipment shortages, fluctuations in oil and gas prices, and changes to government rules and regulations. If recoveries or performance levels are lower than projected, creditors may not be paid in full within the timeframe projected or payment in full to creditors may be delayed. However, after careful analysis of all the data and options available, the Debtors believe the projections they have made are reasonable, the Plan is likely to succeed and is in the best interest of all parties in interest of the Estates.

THE CONTENTS OF THIS DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED AS PROVIDING ANY LEGAL, FINANCIAL, SECURITIES, BUSINESS OR TAX ADVICE. EACH CLAIM OR INTEREST HOLDER IS URGED TO CONSULT WITH HIS OR HER OWN LEGAL COUNSEL AND/OR TAX ADVISOR AS TO THE LEGAL, FINANCIAL, SECURITIES, BUSINESS, TAX AND OTHER CONSEQUENCES TO SUCH HOLDER UNDER THE PLAN. THE DEBTORS MAKE NO WARRANTIES OR REPRESENTATIONS REGARDING THE TAX IMPACT OF THE PLAN ON ANY CLAIM OR INTEREST HOLDER.

NEITHER THE PLAN NOR THE DISCLOSURE STATEMENT HAVE BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION ("SEC"), NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT.

Certain of the statements herein contain forward-looking information based upon certain estimates and assumptions. There can be no assurance that such statements will be reflective of actual outcomes. While the Debtors believe that the expectations and assumptions reflected in the forward-looking information are reasonable, Parties are cautioned that any such forward-looking information is not a guaranty of future performance, involves risks and uncertainties, and actual results may differ materially from those contemplated by such forward-looking projections and forecasts. Some of the risks and other factors that could cause results to differ materially from those expressed in the forward-looking information include, but are not limited to: operational risks; delays or changes in plans; competition for and/or inability to retain drilling rigs and other services; competition for, among other things, capital, acquisitions of reserves, skilled personnel and supplies; risks associated to the uncertainty of reserve and resource estimates; governmental regulation of the oil and gas industry, including environmental regulation; geological, technical, drilling and processing problems and other difficulties in producing reserves; the uncertainty of estimates and projections of production, costs and expenses; unanticipated operating events or performance which can reduce production or cause production to be shut in or delayed; incorrect assessments of the value of acquisitions; the need to obtain required approvals from regulatory authorities; volatility in market prices for oil and natural gas; liabilities inherent in oil and natural gas operations; access to capital; and other factors. This list of risk factors should not be construed as exhaustive.

#### **IV. EXECUTIVE OVERVIEW OF PLAN**

THE DESCRIPTION OF THE PLAN SET FORTH BELOW CONSTITUTES A GENERAL, NON-COMPREHENSIVE SUMMARY ONLY AND IS QUALIFIED, IN ITS ENTIRETY, BY THE PLAN AND THE PLAN SUPPLEMENT, WHICH MAY NOT BE FILED UNTIL TWO WEEKS PRIOR TO THE VOTING DEADLINE. HOLDERS OF ALLOWED CLAIMS AND OTHER PARTIES IN INTEREST ARE URGED TO REVIEW THE SUMMARY OF THE PLAN CONTAINED IN THIS DISCLOSURE STATEMENT AND THE PLAN ITSELF. THE PLAN IS ATTACHED AS EXHIBIT A TO THIS DISCLOSURE STATEMENT. THE PLAN CONTROLS IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN.

Chapter 11 is the chapter of the Bankruptcy Code primarily used for business reorganizations and liquidations. The fundamental purpose of a Chapter 11 case is to formulate a plan to restructure or liquidate a debtor company's finances to maximize recoveries for its creditors. Upon confirmation of the plan, it becomes binding on the debtor and all of its creditors and stakeholders, and the obligations owed by the debtor to those parties are compromised and exchanged for the obligations specified in the plan.

The following is a brief overview of the material provisions of the Plan. This overview is qualified in its entirety by reference to the provisions of the Plan and exhibits attached hereto, as amended from time to time.

As set forth in the Plan and described further in this Disclosure Statement, on and after the Effective Date, the Debtors' assets will vest in the Reorganized Debtors. The Reorganized Debtors



will operate these assets in a manner in which they deem to be in the best interest of the holders of Allowed Claims, which will result in the holders of Allowed Claims being paid in full under the Plan. The Debtors will continue to operate as a going concern, with the primary goal of drilling additional wells using the proceeds of the New Credit Facility and their cash flow. The Debtors believe that these new wells will allow them to unlock value contained in the Debtors' oil and natural gas asset reserves, which will increase their PDP value, enterprise value and cash flows, and allow them to pay holders of Allowed Claims in full. However, to the extent the Debtors do not meet the Debt Coverage Ratio Milestones or the New Credit Facility Milestones (discussed below), the Reorganized Debtors will undergo a process to sell substantially all of their assets and to distribute the sale proceeds, after satisfaction of operational costs and costs of sale, to Holders of Allowed Claims on a *pro rata* basis in accordance with the priority of each Claim.

The following is a list of provisions and/or goals which will aid in the understanding of the remainder of this Disclosure Statement and the accompanying Plan:

- Provided that the Reorganized Debtors are able to drill additional wells using the proceeds of the New Credit Facility and their cash flow and those wells perform as expected, the Plan projects 100% payment of all Allowed Claims, including to the holders of Allowed Class 6 Operator Claims, Allowed Class 7 General Unsecured Claims, and Allowed Class 8 Suspense Claims, which is substantially higher than if the Debtors were liquidated. *See* Financial Projections (**Exhibit B**), and Liquidation Analysis<sup>1</sup> (**Exhibit C**) for related projections. However, to the extent the Reorganized Debtors ultimately need to pursue a sale of their assets during the term of the Plan because they did not meet the Debt Coverage Ratio Milestones or the Exit Facility Milestones, it is likely that there will be insufficient sale proceeds to pay holders of Allowed Claims in full and holders of Allowed Claims will instead receive a *pro rata* distribution of the sale proceeds in order of priority of their Claim.
- The Plan anticipates that the Debtors will drill new wells, including in the Pruitt Project and the OSR-Halliday Unit, utilizing the proceeds of a \$4.87 million New Credit Facility and available cash flow. As set forth in the Financial Projections (**Exhibit B**), the Debtors anticipate that participating in the drilling of new wells using the proceeds of the New Credit Facility and available cash flow will cause the Debtors to generate enough free cash-flow to allow for repayment of the New Credit Facility and to make required Plan payments. Moreover, by participating in the new wells, the Debtors will augment the value of the Debtors' oil and gas assets, their enterprise value and net cash flows, which will enable them to obtain replacement financing that will repay their secured debt in full. While the Debtors do not operate the Pruitt Project or the OSR-Halliday Unit, the operators of those properties have indicated to the Debtors that they are supportive and committed to the development of the properties and that they believe the development plan set forth in the Plan and Financial Projections is reasonable and realistic based on existing assumptions for commodity pricing, costs, and production forecasts.

---

<sup>1</sup> "Liquidation Analysis" means a hypothetical analysis conducted by the Debtors, which estimates potential Cash distributions to holders of Allowed Claims and Interests in a hypothetical Chapter 7 liquidation of the Debtors' assets. The liquidation analysis can be found as Exhibit C to this Disclosure Statement.

- The Reorganized Debtors will operate and make decisions they believe to be in the best interests of the holders of Allowed Claims.

The Plan classifies Claims and Interests in classes, and in accordance with § 1123 of the Bankruptcy Code, does not classify certain Claims. The table below summarizes the classes of claims, description of each claim, treatment of each claim, and specifies whether those Classes are Impaired or Unimpaired by the Plan.

**FOR A COMPLETE DESCRIPTION OF THE PLAN PROPONENTS' CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS, REFERENCE SHOULD BE MADE TO ARTICLES II AND III OF THE PLAN.**

The following is a summary of the treatment of Allowed Claims and Interests and whether they are entitled to vote on the Plan:

<b>Class</b>	<b>Description</b>	<b>Treatment of Allowed Claims / Interests</b>	<b>Voting</b>
N/A	Administrative Claims	Paid in Full	Unclassified. Not Entitled to Vote.
N/A	Fee Claims	Paid in Full	Unclassified. Not Entitled to Vote.
N/A	DIP Claims	Added to balance of New Credit Facility and paid according to the terms of the New Credit Facility Documents	Unclassified. Not Entitled to Vote.
N/A	Priority Tax Claims	Paid in Full	Unclassified. Not Entitled to Vote.
1	Priority Non-Tax Claims	Paid in Full	Impaired. Entitled to Vote.
2	Secured Priority Tax Claims	Paid in Full	Unimpaired. Not Entitled to Vote.
3	Allowed Secured Texas Capital Bank Claim	Paid in Full	Impaired. Entitled to Vote.
4	Allowed Secured Cargill Claim	Paid in Full	Impaired, Entitled to Vote

<b>Class</b>	<b>Description</b>	<b>Treatment of Allowed Claims / Interests</b>	<b>Voting</b>
5	Allowed Other Secured Claims	Paid in Full	Impaired. Entitled to Vote.
6	Allowed Operator Claims	Paid in Full	Impaired. Entitled to Vote.
7	Allowed General Unsecured Claims	Paid in Full	Impaired. Entitled to Vote.
8	Allowed Suspense Claims	Paid in Full	Impaired. Entitled to Vote.
9	Intercompany Claims	Reinstated	Unimpaired. Not entitled to vote.
10	Activa Class A Interests, Activa Incentive Interests, Tiva Interests	Reinstated	Unimpaired. Not Entitled to Vote.
11	Activa Class B Interests	Cancelled	Impaired. Deemed to reject.

## **V. OVERVIEW OF PLAN VOTING AND CONFIRMATION PROCEDURES**

THE BANKRUPTCY COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE NOT YET BINDING ON ANYONE. HOWEVER, IF THE BANKRUPTCY COURT LATER CONFIRMS THE PLAN, THEN THE PLAN WILL BE BINDING ON THE DEBTORS AND ON ALL CREDITORS AND INTEREST HOLDERS IN THESE CASES.

### **A. Voting Procedures and Requirements**

Pursuant to the Bankruptcy Code, only Classes of Claims against or equity Interests in a debtor that are “impaired” under the terms of the Plan are entitled to vote to accept or reject the Plan. A Class is “impaired” if the legal, equitable or contractual rights attaching to the Claims or Interest of that class are modified, other than by curing defaults and reinstating maturity. Classes of Claims and Interest that are not impaired are not entitled to vote on the Plan and are conclusively presumed to have accepted the Plan. In addition, a Class of Claims or Interests that will receive no distributions under the Plan, is not entitled to vote on the Plan and is deemed to have rejected the Plan.

After approval of this Disclosure Statement by the Bankruptcy Court, if you hold an Allowed Claim or Interest in a Class entitled to vote on the Plan, you will receive a ballot along with this Disclosure Statement, which will allow you to vote to accept or reject the Plan. Your acceptance or rejection of the Plan must be made in writing and must be made by completing the ballot, which accompanies this Disclosure Statement, in accordance with the instructions thereon.

If you are entitled to vote, it is in your best interest to timely vote by returning the ballot you receive to the Debtors' Claims and Noticing Agent, Donlin Recano & Co., (a) for hand delivery or overnight mail, Donlin, Recano & Company, Inc., Re: Aactiva Resources, LLC Ballot Processing, Attn: Voting Department, 6201 15th Ave, Brooklyn, NY 11219, or (b) for first class mail, Donlin, Recano & Company, Inc. Re: Aactiva Resources, LLC Ballot Processing, Attn: Voting Department, P.O. Box 199043 Blythebourne Station, Brooklyn, NY 11219.

TO BE COUNTED, YOUR BALLOT MUST BE ACTUALLY RECEIVED BY THE CLAIMS AND NOTICING AGENT BY DECEMBER 15, 2022 AT 5:00 P.M. (CENTRAL TIME) (THE "VOTING DEADLINE").

VOTES CANNOT BE TRANSMITTED ORALLY OR BY FACSIMILE OR E-MAIL. ACCORDINGLY, YOU ARE URGED TO RETURN YOUR SIGNED AND COMPLETED BALLOT, BY HAND DELIVERY, OVERNIGHT SERVICE OR REGULAR U.S. MAIL PROMPTLY.

ANY BALLOT RECEIVED BY THE CLAIMS AND NOTICING AGENT WHICH FAILS TO INDICATE ACCEPTANCE OR REJECTION OR WHICH INDICATE BOTH ACCEPTANCE AND REJECTION OF THE PLAN WILL NOT BE COUNTED AS A VOTE TO ACCEPT OR REJECT THE PLAN. SIMILARLY, BALLOTS THAT ARE NOT PROPERLY SIGNED WILL NOT BE COUNTED AS A VOTE TO ACCEPT OR REJECT THE PLAN.

THE DEBTORS STRONGLY RECOMMEND EACH CREDITOR ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN. VOTING ON THE PLAN BY EACH HOLDER OF AN IMPAIRED CLAIM ENTITLED TO VOTE ON THE PLAN IS IMPORTANT. A VOTE TO ACCEPT THE PLAN, OR FAILURE TO VOTE BY A CREDITOR ENTITLED TO VOTE, CONSTITUTES AN ACCEPTANCE OF ALL OF THE TERMS AND PROVISIONS CONTAINED IN THE PLAN, INCLUDING, BUT NOT LIMITED TO, THE INJUNCTIONS, EXCULPATION, RELEASES AND OTHER LIMITATIONS OF LIABILITY OF THE PLAN. PLEASE CAREFULLY FOLLOW ALL OF THE INSTRUCTIONS CONTAINED ON THE BALLOT PROVIDED TO YOU. IF YOU HOLD CLAIMS IN MORE THAN ONE CLASS OR IF YOU HOLD MULTIPLE GENERAL UNSECURED CLAIMS OR UNDER CERTAIN OTHER CIRCUMSTANCES, YOU MAY RECEIVE MORE THAN ONE BALLOT. YOU SHOULD COMPLETE, SIGN AND RETURN EACH BALLOT IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED.

ANY BALLOT THAT PARTIALLY REJECTS AND PARTIALLY ACCEPTS THE PLAN WILL NOT BE COUNTED. THE BALLOT IS FOR VOTING PURPOSES ONLY AND

DOES NOT CONSTITUTE AND SHALL NOT BE DEEMED A PROOF OF CLAIM OR AN ASSERTION OF A CLAIM OR INTEREST.

THE PROPONENTS OF THE PLAN CURRENTLY EXPECT TO SEEK CONFIRMATION OF THE PLAN PURSUANT TO § 1129(A)(8) OF THE BANKRUPTCY CODE. IF ANY OF THE CLASSES OF HOLDERS OF IMPAIRED CLAIMS VOTE TO REJECT THE PLAN:

- THE PLAN PROPONENTS MAY SEEK TO SATISFY THE REQUIREMENT FOR CONFIRMATION OF THE PLAN UNDER THE “CRAMDOW” PROVISIONS OF § 1129(b) OF THE BANKRUPTCY CODE AND, IF REQUIRED, MAY AMEND THE PLAN TO CONFORM TO THE STANDARDS OF SUCH SECTION; OR
- THE PLAN MAY BE MODIFIED OR WITHDRAWN IN ITS ENTIRETY.

**B. Deadline for Objecting to Confirmation of the Plan**

Pursuant to § 1128 of the Bankruptcy Code, parties in interest may object to confirmation of the Plan. Any objections to confirmation of the Plan must be in writing and must be filed with the Bankruptcy Court and served upon the Plan Proponents. Objections to the confirmation of the Plan must be filed by December 15, 2022 at 5:00 p.m. (Central Time).

**C. Time and Place of the Confirmation Hearing**

The Bankruptcy Court has scheduled the hearing to consider confirmation of the Plan for December 20, 2022 at 10:00 a.m. (Central Time) (the “**Confirmation Hearing**”) before the Honorable Judge Michael M. Parker, at the Hipolito F. Garcia Federal Building and United States Courthouse, 615 East Houston Street, Room 383, San Antonio, Texas 78205.

The Confirmation Hearing may be adjourned from time to time without notice except as given in the courtroom at the Confirmation Hearing, or at any subsequent adjourned Confirmation Hearing, or by the filing of a notice on the docket in these Chapter 11 Cases which docket may be accessed online by visiting the website maintained by the Claims and Noticing Agent at <https://www.donlinrecano.com/Clients/arl/Index>.

**D. Contact for More Information on the Plan**

If you are entitled to vote and you did not receive a ballot, received a damaged ballot, or lost your ballot, you may obtain a replacement ballot by contacting counsel to the Debtors. Further, any party in interest desiring further information about the Plan, or having questions concerning voting procedures, should contact counsel to the Debtors as follows:

Bernard R. Given II, Esq.  
Loeb & Loeb LLP  
10100 Santa Monica Blvd., Ste. 2200

Los Angeles, CA 90067  
Telephone: (310) 282-2000  
Fax: (310) 734-1686  
E-Mail: bgiven@loeb.com

-and-

Bethany D. Simmons, Esq.  
Loeb & Loeb LLP  
345 Park Avenue  
New York, NY 10154  
Telephone: (212) 407-4000  
Fax: (212) 407-4990  
Email: bsimmons@loeb.com

Counsel for the Debtors cannot provide legal advice to holders of Claims or Interests.

## **VI. HISTORY OF DEBTORS AND ONGOING OPERATIONS**

The following is a brief discussion of the Debtors' historical and ongoing business operations.

### **A. Business Operations and Performance**

Activa is an independent oil and gas company headquartered in San Antonio, Texas. Activa was initially formed in 2003. It was converted to a limited partnership for a period beginning in 2005 and then was converted back to a limited liability company in 2007 with the merger and acquisition of New Tuleta Energy Partners, LLC. At that time, Activa was owned solely by Activa Holding Corporation, which was, in turn owned by Activa Resources AG, a German company. Then, in 2016, CIC Activa LP acquired a majority stake in Activa and holds 100% of Activa's Class A Interests. Activa Holding Corporation holds 100% of Activa's Class B Interests.

Tiva was later formed and capitalized in 2018 and is solely owned by CIC Activa LP.

The Debtors own a diversified portfolio of conventional oil and natural gas assets located in Texas, Arkansas and Louisiana that have solid production and reserve profiles. The Debtors operate certain of their assets and own working interests in other assets that are operated by other companies. Tiva holds 100% of the working interests in the San Miguel assets (described below) and Activa owns the remainder of the Debtors' assets.

The Debtors are led by an experienced management team, members of which have led, and been involved in, multiple successful drilling programs throughout the course of their careers. These programs included drilling more wells and deploying substantially greater capital amounts than are contemplated by the Plan. Accordingly, the Debtors believe that they have ample human capital to successfully reorganize pursuant to the terms of the Plan.

From 2017 to 2019 the Debtors participated in drilling multiple wells that have made up the majority of their revenues over the last several years and that are expected to make up a substantial portion of the Debtors' projected future revenues from their proven producing reserves. These wells included the Hall's Bayou #3, Longstreet #1, OSR Halliday 111-4H and the JRED 3101, 3102 and 3201. During that time period, the Debtors successfully managed and deployed \$17 million in capital. In 2020 and 2021, development and drilling activity was minimal due to a dramatic drop in crude oil pricing during the COVID-19 pandemic and restrictions on the Debtors' available cash flow because of hedging commitments required by the Debtors' secured lender, Texas Capital Bank.

As discussed in the following summary description of the Debtors' assets, the focus of the Reorganized Debtors' business operations under the Plan will be the further development of the Debtors' oil and gas assets, including the Pruitt Project and the OSR-Halliday Unit. The focus on new drilling in these areas is designed to mitigate risk by providing more diversity across multiple wells where the Debtors hold a smaller working interest versus concentrating capital in fewer wells where the Debtors own higher working interests and are also responsible for operations. The Debtors' projected capital expenditures during the first two years of the Plan are approximately \$11 million, substantially less than prior periods. Capital expenditure projections during the entire term of the Plan are expected to total approximately \$22.85 million. Accordingly, the Reorganized Debtors' business operations during the Plan term are designed to be more conservative than the Debtors' normal course operations from 2017 to 2019 and prior to the turmoil caused in the markets by the COVID-19 pandemic in 2020 and 2021.

## **B. Description of Debtors' Assets**

### **1. OSR-Halliday Unit**

The Debtors' main asset is a 24.68% working interest in the 16,400 acre OSR-Halliday Unit located in Leon and Madison Counties, Texas. The OSR-Halliday Unit is operated by Woodbine Production Company ("**Woodbine**"). The first eight horizontal wells have been drilled in the unit and are on production. The OSR-Halliday Unit has the potential for over 30 million barrels remaining from primary production to full development. The OSR-Halliday Unit has additional potential for other horizons as well.

The Debtors intend to use approximately \$1.75 million of the New Credit Facility to fund their portion of the costs of drilling a new well on the OSR-Halliday Unit. The Debtors expect that preparations for drilling the new well will begin shortly after the Effective Date of the Plan. The Debtors will also have the right under the New Credit Facility Documents to drill a second well on the OSR-Halliday Unit during 2023 using the proceeds of the New Credit Facility in lieu of using those proceeds to fund drilling on the Pruitt Project (discussed further below). Under the terms of the New Credit Facility, the Debtors will utilize 80% of the net operating revenue from oil and gas produced from this new well (or wells, to the extent applicable) to reduce the balance of the New Credit Facility and will use the remaining 20% to fund operations and make payments required by the Plan.

If the Debtors do not use the proceeds of the New Credit Facility to drill a second well on the OSR-Halliday Unit during 2023, the Debtors will fund drilling of the second planned well using their cash flow. In addition, the Debtors intend to participate in drilling other additional wells on the OSR-Halliday Unit using their cash flow, including another well during 2023, two wells during 2024, four wells during 2025, and four wells during 2026. The actual timing for drilling such wells is subject to change, including because the Debtors do not operate the OSR-Halliday Unit and because the drilling schedule is subject, in part, to market conditions and well productivity. Nevertheless, Woodbine has indicated that it believes the drilling schedule proposed by Activa is reasonable and realistic based on existing assumptions for commodity pricing, costs and production forecasts.

It is anticipated that under the terms of the New Credit Facility, the Debtors will fund 80% of their costs of drilling these new wells from their available cash flow and the remaining 20% of the Debtors' portion of the costs of drilling these new wells will be funded directly by the New Credit Facility Lender.

It is anticipated that under the terms of the New Credit Facility Documents, upon repayment of the New Credit Facility, the New Credit Facility Lender will receive 20% of the Debtors' right, title and interest in the wells drilled on the OSR-Halliday Unit using the proceeds of the New Credit Facility or for which the New Credit Facility Lender directly funded 20% of the drilling costs.

## 2. **Pruitt Project**

Activa also owns an 11.5% working interest in the Pruitt Project. The Pruitt area is an area of recent activity that seeks to develop the Olmos reservoir with horizontal wells. The Pruitt Project is operated by BB SouthTex, LLC ("**BlackBrush**").

The Debtors used the proceeds of the \$450,000 DIP Facility to fund their portion of the costs of drilling the Ruple 2H well in April 2022. The Ruple 2H began production in April 2022 with daily production above forecast. Under the New Credit Facility Documents, 80% of the net operating revenue from oil and gas produced from the Ruple 2H well and Ruple 1H well will be used to reduce the balance of the New Credit Facility and the Debtors will use the remaining 20% to fund operations and make payments required by the Plan.

Unless the Debtors use the proceeds of the New Credit Facility to drill two wells on the OSR-Halliday Unit instead of one, the Debtors intend to use approximately \$2.8 million of the New Credit Facility to fund their portion of the costs of land acquisition and drilling several new wells on the Pruitt Project, including two wells shortly after the Effective Date, four wells in 2023 and two wells in 2024. If the Debtors use the proceeds of the New Credit Facility to drill two wells on the OSR-Halliday Unit, they will instead use their available cash flow plus any remaining proceeds under the New Credit Facility to fund these wells and this land acquisition. Moreover, the Debtors intend to use their available cash flow to drill two additional wells during 2024, two wells during 2025 and two wells during 2026. The actual timing for drilling such wells is subject to change. While the Debtors do not operate the Pruitt Project, the operator, BlackBrush, has



indicated that the Debtors' proposed drilling plan is reasonable and realistic given current conditions, including with respect to commodity pricing, costs and production forecasts.

Like with the wells being drilled on the OSR-Halliday Unit, the Debtors intend to utilize 80% of the net operating revenue from oil and gas produced from the wells funded using the proceeds of the New Credit Facility to reduce the balance of the New Credit Facility and will use the remaining 20% to fund operations and make payments required by the Plan. For wells drilled on the Pruitt Project using the Debtors' available cash flow, it is anticipated that the Debtors will fund 80% of the portion of their costs and the New Credit Facility Lender will fund the remaining 20%.

It is also anticipated that under the terms of the New Credit Facility Documents, upon repayment of the New Credit Facility, the New Credit Facility Lender will receive 20% of the Debtors' right, title and interest in the wells drilled on the Pruitt Project using the proceeds of the New Credit Facility or for which the New Credit Facility Lender directly funded 20% of the drilling costs.

### **3. Remaining Assets**

The Debtors' portfolio is rounded out by additional oil and gas producing properties, including, without limitation, the San Miguel Project, Halls Bayou, Pill Branch, and Adams Ranch.

The Alta Loma assets are located in Galveston County Texas and target various middle and Lower Frio sands in multiple fault blocks. Activa is the operator of the Alta Loma assets and expects to a new well to be drilled in 2023. Activa intends to fund its costs of drilling the well using its available cash flows.

The Halls Bayou properties are located in Brazoria County Texas. These wells seek to develop the Big Gas Sand in various fault blocks.

The San Miguel area is located in Dimmit County Texas and targets the 2nd San Miguel sand. Historical development was done with vertical wells, but several operators are further developing the resource with horizontal wells.

### **4. Cash and other Current Assets**

All unrestricted Cash held by the Debtors as of the Confirmation Date will be vested in the Reorganized Debtors and will be utilized to fund the Plan and the Reorganized Debtors' business operations. For additional information regarding the Debtors' projected financial position as of the projected Effective Date, refer to the Financial Projections attached as **Exhibit B**.

As reflected in the Debtors' Schedules and latest monthly operating reports, the Debtors have some additional assets, including accounts receivable. All such assets held by the Debtors will be vested in the Reorganized Debtors as of the Confirmation Date.

## **5. Causes of Action**

The Plan expressly vests in the Debtors all Causes of Action, including Avoidance Actions, as applicable and defined under the terms of the Plan, after the Effective Date. The Debtors do not currently intend to pursue any Causes of Action, including Avoidance Actions, but reserve their rights to do so. In the event the Debtors ultimately were required to pursue the Post-Confirmation Sale (discussed below), the Debtors would likely sell any Causes of Action, to the extent the statute of limitations on such Causes of Action had not yet expired, to the purchaser of the assets to which the Cause of Action relates. Such purchaser may then decide whether or not to pursue the Causes of Action.

### **C. Description of Debtors' Liabilities**

The Plan Proponents and/or the Reorganized Debtors, as the case may be, are still evaluating all Claims, and reserve all rights with respect to objecting to or otherwise challenging all Claims. Nothing in this section is, or is intended, to be an admission as to the validity, amount, priority, nature, or extent of any Claim.

#### **1. Administrative and Fee Expenses (Unclassified)**

The Debtors estimate that there will be approximately \$325,000 of Administrative and Fee Claims payable as of the Effective Date.

The Debtors continue to operate their business as debtors-in-possession and to incur costs and expenses in the ordinary course of business. To the extent any such costs and expenses are outstanding as of the Effective Date, they may be asserted as Administrative Expense Claims.

#### **2. DIP Claims (Unclassified)**

With Court approval, the Debtors' obtained secured financing totaling \$450,000, plus payable fees and expenses, to fund Activa's costs of drilling the Ruple 2H well on the Pruitt Project. The well was completed in April 2022 and, consistent with the DIP Agreement, the Debtors have been paying 75% of the Net Operating Revenue (as defined in the DIP Order) from the Ruple 1H and Ruple 2H towards reducing the outstanding balance of the DIP Facility. The Debtors estimate that approximately \$348,000 is currently owed on account of DIP Claims.

The DIP Facility is currently scheduled to mature on or about March 17, 2023, with the Debtors having an option to extend the maturity by an additional 180 days for a \$20,000 fee. Under this scenario, the Debtors project that the DIP Facility would be repaid by the end of 2023. However, under the terms of the New Credit Facility Documents (discussed in more detail below), the DIP Claims will be added to the balance of the New Credit Facility and will be payable in accordance with the terms of the New Credit Facility Documents.

**3. Priority Tax Claims (Unclassified)**

The Debtors' Schedules and Proofs of Claim filed against the Estates reflect certain Priority Tax Claims, which the Debtors estimate total approximately \$28,000.00.

**4. Class 1 (Priority Non-Tax) Claims**

The Debtors' Schedules and Proofs of Claim filed against the Estates do not reflect any non-tax unsecured claims entitled to priority under the Bankruptcy Code.

**5. Class 2 (Secured Priority Tax) Claims**

Class 2 consists of all Allowed Secured Priority Tax Claims. The Debtors' Schedules and Proofs of Claim filed against the Estates reflect that Secured Priority Tax Claims may be as high as approximately \$7,325.00.

**6. Class 3 (Allowed Secured Texas Capital Bank Claim) Claim**

Texas Capital Bank has filed a Claim against the Estates in the amount of \$10,424,644.47, which it asserts is a Secured Claim.

The Debtors have agreed that the Allowed Secured Texas Capital Bank Claim shall be in the amount of \$10,765,636.13, subject to inclusion of additional interest from September 30, 2022 through the Confirmation Date as well as attorneys' fees and costs that may be approved by the Bankruptcy Court pursuant to section 506(b) of the Bankruptcy Code or other applicable Bankruptcy Code section.

**7. Class 4 (Allowed Secured Cargill Claim) Claim**

The Debtors have agreed the Allowed Secured Cargill Claim shall be in the amount of \$1,170,487.02, plus accrued attorneys' fees and costs that may be approved by the Bankruptcy Court pursuant to section 506(b) of the Bankruptcy Code or other applicable Bankruptcy Code section.

**8. Class 5 (Allowed Other Secured Claims) Claims**

Class 5 consists of all Allowed Other Secured Claims. The Debtors' Schedules and Proof of Claims filed against the Estates do not reflect any Other Secured Claims that the Debtors believe will be Allowed Secured Claims.

**9. Class 6 (Allowed Operator Claims) Claims**

Class 6 consists of all Allowed Operator Claims. Operator Claims are claims arising from the holder's status as operator of certain oil and gas wells under oil and gas leases in which the Debtors own non-operator working interests. The Debtors' Schedules and Proof of Claims filed against the Estates reflect that Allowed Operator Claims may be as high as approximately \$400,000.00.

**10. Class 7 (General Unsecured Claims) Claims**

Class 7 consists of Allowed General Unsecured Claims. The Debtors are still in the process of reviewing the General Unsecured Claims and reserve all rights to object to any such claims on any basis. Claims that were scheduled as contingent, disputed, or unliquidated are not included in Class 7 and will receive no distribution under the Plan. The Debtors believe that Allowed General Unsecured Claims will total approximately \$222,000.

The Debtors expect that several of the asserted General Unsecured Claims will not require payments under the Plan. For example, Lexon Insurance Company (the “**Surety**”) filed a Claim in the amount of \$125,000.00 relating to surety bonds issued for the Debtors. However, because the Debtors are reaffirming their agreements with the Surety in the Plan, no payment will be owed to the Surety on account of the claim it filed.

In addition to the holders of Allowed Class 7 (General Unsecured) Claims reflected in the Debtors’ Schedules and Proofs of Claim filed against the Estates, there may be additional holders of Allowed Class 7 (General Unsecured) Claims arising from the rejection of executory contracts and/or unexpired leases prior to the Effective Date or under the Plan.

**11. Class 8 (Suspense Claims) Claims**

Class 8 consists of Allowed Suspense Claims. Suspense Claims are those claims held by royalty interest owners, overriding royalty interest owners and working interest owners in oil and gas leases operated by Activa prior to the Petition Date. After certain payments pursuant to the *Final Order Authorizing the Debtors to Pay or Honor Prepetition and Post-Petition Royalty Obligations, Working Interests Obligations and Other Obligations Related to Oil and Gas Leases* [Docket No. 144] (the “**Royalty Motion Order**”), the Debtors believe that total Allowed Suspense Claims will total approximately \$200,000.00.

The Debtors expect that several of the asserted Suspense Claims will not require payments under the Plan. For example, Kenilworth Oil Company has asserted a Suspense Claim in the amount of \$151,150.34 in attorneys’ fees and interest on account of alleged past due royalty payments. However, the Debtors believe that no payment is currently due to Kenilworth Oil Company.

**12. Class 9 (Intercompany) Claims**

Class 9 consists of all Intercompany Claims between Activa and Tiva.

**13. Class 10 (Class A Interests) Interests**

Class 10 consists of all Activa Class A Interests, Activa Incentive Interests, and Tiva Interests.

**14. Class 11 (Class B Units) Interests**

Class 11 consists of all Activa Class B Interests, which are being deemed worthless and will be cancelled under the Plan.

#### **D. Ownership**

Activa is owned 82.4% by CIC Activa LP, which owns 9,500,000 Class A Units in Activa and 17.6% by Activa Holdings Corporation, which owns 4,071,000 Class B Units in Activa. Activa has also issued 55,000 Incentive Units to the Debtors' President, which currently hold no value.

Tiva is owned 100% by CIC Activa LP.

The Plan provides for holders of Activa's Class A Units and Incentive Units, and holders of Tiva's Interests to retain their ownership interests after the Effective Date. However, until all holders of Allowed Claims in Classes 2 through 8 have received the Distributions to which they are entitled to under in Sections 3.3 through 3.10 of the Plan, the Reorganized Debtors may not cause or permit Reorganized Debtors to: (a) declare or pay any dividends, purchase, redeem, retire, defease or otherwise acquire for value the Interests now or hereafter outstanding; or (b) make any distribution of assets, Interests, obligations or securities to its members. The Reorganized Debtors will not be restricted from paying reasonable salaries, benefits, and customary bonuses to officers or employees of Reorganized Debtors or reimbursing officers or employees of Reorganized Debtors for ordinary and reasonable business expenses incurred on behalf of Reorganized Debtors.

#### **E. Special Provision Governing Unimpaired Claims**

Except as otherwise provided herein, nothing under the Plan shall affect the Reorganized Debtors' rights and defenses in respect of any Claim that is Unimpaired under the Plan, including, without limitation, all rights in respect of (1) legal and equitable defenses to, (2) setoff or recoupment against, or (3) counter-claims with respect to any such Unimpaired Claims.

### **VII. EVENTS LEADING TO CHAPTER 11 FILING**

#### **A. Circumstances Leading to the Commencement of the Chapter 11 Cases**

On August 17, 2007, Activa, as borrower, entered into that certain Credit Agreement (as amended from time to time, the "**Credit Agreement**", and together with all documents, agreements and instruments executed and delivered therewith and all related documents, agreements and instruments, collectively, the "**Loan Documents**") with Texas Capital Bank, N.A., as lender (the "**Texas Capital Bank**"). Texas Capital Bank asserts that \$10,424,644.47 was due and outstanding under the Loan Documents as of the Petition Date (the "**Loan**"). Texas Capital Bank asserts that the repayment of the Loan is secured by substantially all of the Debtors' assets, with the exception of the Pruitt Project.

As of September 15, 2011, Activa entered into that certain ISDA Master Agreement (the "**Hedging Agreement**") with Cargill, Inc. ("**Cargill**"). As of December 27, 2011, Activa, Cargill, and Texas Capital Bank entered into that certain Intercreditor Agreement (the "**Intercreditor Agreement**") to establish the relative priorities with respect to Activa's payment of its obligations

under the Credit Agreement and the Hedging Agreement. Under the Intercreditor Agreement, Texas Capital Bank agreed to act as Collateral Agent (as that term is defined in the Intercreditor Agreement) for both Texas Capital Bank and Cargill.

Pursuant to the Twenty-First Amendment to the Credit Agreement, effective as of June 13, 2018, and other Loan Documents executed in connection therewith, Tiva agreed to guarantee the indebtedness owed by Activa under the Loan Documents.

Then, record low oil and gas prices in 2020 during the COVID-19 pandemic created a challenging situation for the Debtors in 2021. Production dropped and the Debtors' liquidity and ability to grow production through further drilling was limited by the significantly reduced oil and gas prices. The low oil and gas prices, coupled with tightened credit standards and advance rates, also resulted in a significant reduction in the Debtors' Borrowing Base (as defined in the Credit Agreement) under the Credit Agreement with Texas Capital Bank.

As of March 31, 2021, the Debtors and Texas Capital Bank entered into the Twenty-Fourth Amendment to the Credit Agreement (the "**Amendment**"). Under the Amendment, Activa was required to enter into hedges under the Hedging Agreement for the majority of its oil production at a time when the average price of oil was \$50 per barrel. At the same time, however, industry experts were forecasting that the price of oil per barrel would increase to \$70 or more dollars per barrel in the next three to four months as the economy was recovering from the pandemic. While Activa protested Texas Capital Bank's requirement that it enter into the hedges, it was unable to persuade Texas Capital Bank. Accordingly, Activa entered into hedges with Cargill at prices ranging from \$58 per barrel of oil in May 2021 to \$54.35/\$56.17 per barrel for August 2022. In addition, under the Amendment, Activa was required to make monthly capital reduction payments of \$150,000 in addition to payments of interest of approximately \$50,000 per month. The hedges with Cargill quickly went negative. The hedge cost Activa more than \$70,000 in June 2021 and more than \$120,000 per month in both October 2021 and January 2022.

The combination of the hedges, monthly capital reduction payments, and interest payments exceeded the net cash flow of the company. In August 2021, management and Activa's Board of Directors determined that continuing to pay the \$150,000 in monthly capital reduction, the increased payments required under the Hedging Agreement, and the interest payments to Texas Capital Bank would put Activa at risk of not being able to pay its normal course operating expenses. This could have resulted in liens being placed on the Debtors' properties (and Texas Capital Bank's Collateral). Recognizing that their options were limited while the hedges with Cargill were in place, the Debtors offered and Texas Capital Bank accepted the Debtors' offer to continue to pay pre-default interest while the Debtors worked on a plan to address the liquidity problems they faced.

During the course of 2021, the Debtors paid monthly capital reduction payments estimated at \$972,000, \$647,000 in estimated hedge payments to Cargill and \$511,00 in interest. Activa continued to pay its vendors in the normal course of business on a 30-60-day schedule through December 2021.

However, at the end of January 2022, Texas Capital Bank swept Activa's operating accounts and put a hold on Activa's joint interest account. This action severely limited the Debtors' ability to continue the normal course of business. At the same time, the Debtors' received joint interest billings from one of their operators that was more than \$200,000 greater than budgeted. Both of these events created a liquidity crisis for the Debtors that necessitated the filing of the Chapter 11 Cases to protect the Debtors' business as a going concern for the benefit of the Debtors' creditors and other stakeholders.

#### **B. Filing of the Chapter 11 Cases**

On the Petition Date, February 3, 2022, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have focused on maintaining production levels to hold their oil and gas leases, investing in the Ruple 2H well to increase their cash flows, and developing a viable plan of reorganization to satisfy the remainder of the Allowed Claims against the Debtors, all while operating within the budgets they agreed to with the secured creditors, Texas Capital Bank and Cargill.

The Plan Proponents have filed the Plan in good faith and believe it will generate the greatest maximization of value for the Estates and the Debtors' creditors. Throughout the Chapter 11 Cases, the Debtors have continued to operate their businesses and managed their financial affairs as debtors in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

### **VIII. SIGNIFICANT MATTERS IN THE BANKRUPTCY CASE**

#### **A. First Day Motions and Orders**

On the Petition Date and the following days, the Debtors filed a number of first day pleadings seeking relief that the Debtors believed was necessary to efficiently administer their Estates with minimal disruption and loss of value. The Debtors requested authority to, among other things, (1) pay prepetition workforce claims and other benefits up to statutory limits [Docket No. 9], (2) maintain necessary insurance coverage [Docket No. 8], (3) continuing using their cash management system [Docket No. 7], (4) utilize cash collateral (the "**Cash Collateral Motion**"), (5) pay certain critical vendors [Docket No. 12], and (6) pay certain royalty obligations, working interest obligations, and other obligations related to their oil and gas leases [Docket No. 13]. The Bankruptcy Court entered orders approving these requests on a final basis, with the exception of the Cash Collateral Motion (discussed below).

#### **B. Cash Collateral**

With respect to the Cash Collateral Motion, the Debtors agreed with Texas Capital Bank and Cargill to a series of interim orders on the use of cash collateral. The interim orders included agreed budgets and required the Debtors to provide reports to Texas Capital Bank and Cargill on a bi-weekly basis setting forth any variances in the Debtors' actual spending versus the budget. The Debtors have consistently provided timely and accurate reporting to Texas Capital Bank and Cargill and have also consistently operated within the confines of the agreed budgets.



The Court approved the Debtors' use of cash collateral pursuant to the Cash Collateral Motion on a final basis at a hearing held on November 8, 2022.

**C. Retention of Debtors' Professionals**

On February 18, 2022, the Debtors filed their *Application for Order Authorizing the Debtors' Retention of Loeb & Loeb LLP as Counsel to the Debtors, Effective as of the Petition Date* [Docket No. 61]. On February 24, 2022, the Bankruptcy Court entered an order approving the Debtors' retention of Loeb & Loeb LLP [Docket No. 68].

On February 18, 2022, the Debtors filed the *Debtors' Application for Appointment of Donlin, Recano & Company, Inc., as Claims, Noticing, and Solicitation Agent, Effective as of the Petition Date* [Docket No. 62]. On March 3, 2022, the Bankruptcy Court entered an order granting the application [Docket No. 82].

On March 21, 2022, the Debtors filed the *Application for Order Authorizing the Debtors' Retention of Haynie & Company as Accountants and Auditors, Effective as of February 28, 2022* [Docket No. 115]. On April 19, 2022, the Bankruptcy Court entered an order granting the application [Docket No. 173].

On April 8, 2022, the Debtors filed the *Application for Order Authorizing the Debtors' Retention of Haas Petroleum Engineering Services, Inc. as Petroleum Engineers, Effective as of April 8, 2022* [Docket No. 156]. On May 4, 2022, the Bankruptcy Court entered an order granting the application [Docket No. 195] and the Debtors retained Haas to audit their oil and gas reserves analysis and to provide a valuation of the Debtors' oil and gas assets.

On June 14, 2022, the Debtors filed the *Application for Order Authorizing the Debtors' Retention of Wyse Advisors, LLC, as Financial Advisors to Debtors, Effective as of May 25, 2022* [Docket No. 228]. On July 12, 2022 the Bankruptcy Court entered an order granting the application [Docket No. 242].

**D. Establishment of Bar Date**

The Bankruptcy Court set the bar date for filing proofs of claims against the Debtors as June 13, 2022.

**E. Assumption of Unexpired Leases and/or Executory Contracts**

On August 11, 2022, the Debtors filed their first motion to extend the time to assume, reject, or assign their office lease and their oil and gas leasehold interests under 11 U.S.C. § 365(d)(4)(B)(i) (the "**Motion to Extend**"). The Motion to Extend sought to enlarge the time period provided under the Bankruptcy Code for the Debtors to assume, assign and/or reject non-residential real property leases, including for their office lease, but also to any extent applicable to the Debtors' unexpired oil and gas leasehold interests. The Bankruptcy Court granted the Motion to Extend on September 8, 2022, extending the Debtors' time to assume, reject or assign their



office lease and their oil and gas leasehold interests until the earlier of November 30, 2022 or confirmation of the Plan.

Because the Debtors anticipate that the Plan will be confirmed after November 30, 2022, the Debtors intend to file a second Motion to Extend, seeking an order extending the assumption, assignment and rejection deadline for their office lease by an additional 30 days. The Debtors also intend to file a motion to assume their oil and gas leasehold interests to the extent section 365 of the Bankruptcy Code applies.

#### **F. DIP Lending**

On March 7, 2022, the Debtors filed a motion [Docket No. 89] (the “**DIP Motion**”) seeking the Bankruptcy Court’s approval of the Debtors’ entry into a \$450,000 senior secured debtor-in-possession financing facility (the “**DIP Facility**”) to be provided by Citrus Holdings, LLC (the “**DIP Lender**”) in accordance with the terms of the Debtor-in-Possession Loan and Security Agreement (the “**DIP Agreement**”). The Debtors sought the DIP Facility to fund Activa’s share of the costs of drilling the Ruple 2H Well, located on the Pruitt Project.

On April 5, 2022, the Bankruptcy Court entered an order granting the DIP Motion on a final basis and approving the Debtors’ entry into the DIP Facility [Docket No. 141]. In exchange for the DIP Facility, the Debtors agreed to provide the DIP Lender with interest at the Wall Street Journal Prime Rate plus five percent (5%) per annum, payable at maturity, and a \$40,000 origination fee. The Debtors also agreed to repay the principal, interest and origination fee on the DIP Facility from 75% of the net operating revenue from the Ruple 1H and the Ruple 2H wells with the balance due at the maturity date. The current maturity date of the DIP Facility is on or about March 17, 2023, which may be extended at the Debtors’ option by an additional one-hundred eighty (180) days upon payment of a \$20,000 option fee.

As collateral for the DIP Facility, the Debtors’ granted the DIP Lender a security interest and lien on 100% of Activa’s right, title and interest in the wells, equipment, land, leases, data and agreements that make up the Pruitt Project, including the Ruple 1H Well, Ruple 2H Well, all leasehold, geological, geophysical, engineering and other data associated with the project and the proceeds thereof (the “**DIP Collateral**”); provided, however, that, to the extent any of the DIP Collateral included personal property, the DIP Lender’s liens are junior to any validly perfected lien held by Texas Capital Bank on the Debtors’ personal property.

The Debtors utilized the DIP Facility for its intended purpose and the Ruple 2H Well has been completed and is producing at higher than initially expected levels.

As discussed below, if the Plan is approved, the DIP Claims will be added to the balance of the New Credit Facility and the DIP Claims will be payable in accordance with the New Credit Facility Documents. The DIP Collateral will serve as collateral for the New Credit Facility along with the other collateral specified in the New Credit Facility Documents.

#### **G. Valuation of Debtors’ Assets**

As set forth above, the Debtors' retained Haas in April 2022 to conduct an audit of their oil and gas reserves report. Haas completed its audit in June 2022 and issued its unqualified audit (the "**Haas Report**"). Haas estimated that, as of May 1, 2022, the Debtors' proved producing reserves, discounted at ten percent per annum, totaled approximately \$17.5 million. Haas further estimated that the proved undeveloped assets, also discounted at ten percent per annum, totaled approximately \$43.4 million. Haas further noted in the Haas Report that any variances between Activa's internal estimations as compared to Haas's estimations did not exceed the ten percent tolerance of auditing standards.

Given recent fluctuation in the price of oil and gas, the Debtors requested that Haas update the Haas Report to provide a valuation of the Debtors' proved producing reserves as of October 1, 2022, utilizing both (1) the five year monthly strip pricing from the last 180 days from the New York Mercantile Exchange ("NYMEX"), and (2) the estimated price deck required to be used by the Securities and Exchange Commission ("SEC") for an October 1, 2022 valuation of a public company. Haas estimated that, using the NYMEX strip pricing, the Debtors' proved producing reserves, discounted at ten percent per annum, totaled approximately \$13.7 million. Haas further estimated that, using the SEC price deck, the Debtors' proved producing reserves, discounted at ten percent per annum, totaled approximately \$19.7 million. The Debtors did not request, and Haas did not make, any other changes to the Haas Report, including to update historic productions, to inspect lease operating statements or accounting inputs, or to adjust producing well inventory for any potential developments since June 2022. That said, actual total produced volumes from May – September 2022 are within 1% of the forecasted volumes contained in the initial Haas Report.

Given the updated valuation from Haas and the Debtors' cash on-hand, the Debtors believe that Texas Capital Bank and Cargill are oversecured and they will not have any Deficiency Claim payable as a Class 7 Allowed General Unsecured Claim.

## **IX. SUMMARY OF PLAN OF REORGANIZATION**

### **A. Summary of Treatment of Claims and Interests**

As required by the Bankruptcy Code, the Plan classifies claims and interests in various classes according to their right to priority of payments as provided in the Bankruptcy Code. The Plan states whether each class of claims or interests is impaired or unimpaired. The Plan provides the treatment each class will receive under the Plan. Certain types of claims are not placed into voting classes; instead they are unclassified. The treatment of these claims is provided below.

#### **1. Description and Treatment of Unclassified Claims**

##### **a. Administrative Expense Claims**

As provided under Bankruptcy Code § 1123(a)(1), Administrative Expense Claims are not classified for purposes of voting on, or receiving distributions under, the Plan. Accordingly, holders of Administrative Expense Claims are not entitled to vote on the Plan. In addition, the Debtors continue to operate their business as debtors-in-possession and to incur costs and expenses

in the ordinary course of business. To the extent any such costs and expenses are outstanding as of the Confirmation Date, they may be asserted as Administrative Expense Claims.

Subject to the other terms and conditions of Article II of the Plan, on the later of the Effective Date or the date on which an Administrative Claim becomes an Allowed Administrative Claim, or, in each such case, as soon as practicable thereafter, each holder of an Allowed Administrative Claim (other than an Allowed Fee Claim) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim either (i) Cash equal to the amount of such Allowed Administrative Claim; or (ii) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the holder of such Allowed Administrative Claim shall have agreed upon in writing; *provided, however*, that Administrative Claims incurred by the Debtors or Reorganized Debtors in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court.

Except as otherwise provided in section 503(b)(1)(D) of the Bankruptcy Code, unless previously filed or paid, requests for payment of Administrative Claims must be filed and served on the Reorganized Debtors, pursuant to the procedures specified in the Confirmation Order by no later than the Administrative Claims Bar Date. 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, the Reorganized Debtors, the Estates, and their respective Assets and property, and such Administrative Claims shall be deemed discharged as of the Effective Date. All such Administrative Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Section 9.3 of the Plan.

Objections to such payment requests must be filed and served on the Reorganized Debtors and the requesting party by the later of (a) sixty (60) days after the Administrative Claims Bar Date and (b) sixty (60) days after the filing of the applicable request for payment of Administrative Claims, if applicable, as the same may be modified or extended from time to time by Final Order of the Bankruptcy Court.

#### **(1) Professional Fee Claims**

Professionals or other Entities asserting a Fee Claim for services rendered before the Effective Date must file and serve on the Reorganized Debtors and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court an application for final allowance of such Fee Claim no later than the Fee Claims Bar Date; provided that the Reorganized Debtors shall pay Professionals retained by the Debtors or Reorganized Debtors, in the ordinary course of business for any work performed after the Effective Date, including those reasonable and documented fees and expenses incurred by such Professionals in connection with the implementation and consummation of the Plan, in each case without further application or notice to or order of the Bankruptcy Court.

Objections to any Fee Claim must be filed and served on the Reorganized Debtors and the requesting party by no later than twenty-one (21) days after the filing of the applicable final request for payment of the Fee Claim.

Each holder of an Allowed Fee Claim shall be (i) paid in full in Cash within ten (10) Business Days after entry of the order approving such Allowed Fee Claim or (ii) will receive such other less favorable treatment as to which Reorganized Debtors and the holder of such Allowed Fee Claim shall have agreed upon in writing.

**(2) Statutory U.S. Trustee Fees**

All United States Trustee fees payable pursuant to 28 U.S.C. § 1930 shall be paid in full, by the Debtors or Reorganized Debtors, as applicable, as they come due, without the need for the Office of the United States Trustee to file any request for payment.

**(3) DIP Claims**

Under the Plan, the DIP Claims shall survive the Effective Date and shall not be released or discharged pursuant to the Plan or Confirmation Order, notwithstanding any provision thereof to the contrary. The DIP Claims will be added to the balance of the New Credit Facility and will be paid in accordance with the terms of the New Credit Facility Documents.

**b. Priority Tax Claims**

Priority Tax Claims are certain unsecured income, employment and other taxes described by Bankruptcy Code § 507(a)(8). As provided under Bankruptcy Code § 1123 (a)(1), Priority Tax Claims are not classified for purposes of voting on, or receiving distributions under, the Plan. Accordingly, holders of Priority Tax Claims are not entitled to vote on the Plan.

The legal, equitable and contractual rights of the holders of Allowed Priority Tax Claims are unaltered by the Plan. On, or as soon as reasonably practicable after, the later of (i) ninety (90) days following the Effective Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each holder of an Allowed Priority Tax Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Reorganized Debtors: (A) Cash equal to the amount of such Allowed Priority Tax Claim (to the extent there is sufficient Available Cash to make such payment); (B) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the holder of such Allowed Priority Tax Claim shall have agreed upon in writing; or (C) pursuant to and in accordance with sections 1129(a)(9)(C) and 1129(a)(9)(D) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Priority Tax Claim payable in regular installment payments over a period ending not more than five (5) years after the Petition Date, plus simple interest at the rate required by applicable non-bankruptcy law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to in writing by a particular taxing authority and the Debtors or Reorganized Debtors, as applicable; *provided, however*, that Priority Tax Claims incurred by Debtors or Reorganized Debtors in the ordinary course of business may be paid in the ordinary

course of business by Reorganized Debtors in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. Any installment payments to be made under clause (C) above shall be made in equal quarterly payments beginning on the last Business Day of the month following the end of each calendar quarter after the Effective Date, and continuing thereafter until payment in full of the applicable Allowed Priority Tax Claim.

## **2. Description of Classified Claims**

Claims and Interests, other than Allowed Administrative Expense Claims, and Allowed Priority Tax Claims, are classified for all purposes including voting, confirmation and distribution pursuant to the Plan as set forth below unless otherwise specified. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim may be bifurcated and classified in other Classes to the extent that any portion of the Claim falls within the description of such other Classes. A Claim or Interest is placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class and such Claim or Interest has not been paid, released or otherwise satisfied prior to the Effective Date. Under the Plan, multiple Proofs of Claim filed by a Claim holder, which qualify for inclusion within the same Class, shall be aggregated, and if Allowed, shall constitute a single Allowed Claim. If the holder of an Allowed Claim timely filed a Proof of Claim, substantially conforming to the appropriate official form, such Proof of Claim will be deemed to supersede any listing of the same Claim in the Schedules, subject to Dispute if the nature or amount of the Claim as asserted in the Proof of Claim varies from the nature or amount of such Claim as listed on the Schedules.

## **3. Treatment of Classified Claims and Interests**

### **a. Class 1: Allowed Priority Non-Tax Claims**

Class 1 consists of all Allowed Priority Non-Tax Claims. Class 1 is Impaired by the Plan and the holders of Allowed Priority Non-Tax Claims are deemed entitled to vote on the Plan.

On, or as soon as reasonably practicable after, the later of (i) sixty (60) days following the Effective Date if such Priority Non-Tax Claim is an Allowed Priority Non-Tax Claim as of that date or (ii) sixty (60) days following the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, each holder of an Allowed Priority Non-Tax Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Non-Tax Claim, at the election of the Reorganized Debtors: (A) Cash equal to the amount of such Allowed Priority Non-Tax Claim, payable without interest in quarterly installments over a three-year period; (B) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the holder of such Allowed Priority Non-Tax Claim shall have agreed upon in writing; or (C) such other treatment such that it will not be Impaired pursuant to section 1124 of the Bankruptcy Code; *provided, however*, that Class 1 Claims incurred by Debtors or Reorganized Debtors in the ordinary course of business may be paid in the ordinary course of business by Debtors or Reorganized Debtors, as applicable, in accordance with the terms and



conditions of any agreements relating thereto without further notice to or order of the Bankruptcy Court. Any installment payments to be made under clause (A) above shall be made in equal quarterly Cash payments beginning on or about December 31, 2022, and continuing quarterly thereafter until payment in full of the applicable Allowed Secured Priority Non-Tax Claim. Notwithstanding the foregoing, if a Sale Trigger occurs, any holder of an Allowed Priority Non-Tax Claim that has not yet been paid in full shall instead receive payment from the proceeds of the Post-Confirmation Sale consistent with section 4.5 of the Plan.

**b. Class 2: Allowed Secured Priority Tax Claims**

Class 2 consists of the Allowed Secured Priority Tax Claims. Class 2 is Unimpaired by the Plan and the holders of Allowed Secured Priority Tax Claims are deemed to accept the Plan and, therefore, are not entitled to vote on the Plan.

On, or as soon as reasonably practicable after, the later of (i) sixty (60) days following the Effective Date, if such Secured Priority Tax Claim is an Allowed Secured Priority Tax Claim as of that date, or (ii) as soon as is reasonably practicable after the date such Secured Priority Tax Claim becomes an Allowed Secured Priority Tax Claim, each holder of an Allowed Secured Priority Tax Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Secured Priority Tax Claim, at the election of the Reorganized Debtors: (A) Cash equal to the amount of such Allowed Secured Priority Tax Claim; (B) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the holder of such Allowed Secured Priority Tax Claim shall have agreed upon in writing; (C) the Collateral securing such Allowed Secured Priority Tax Claim; (D) such other treatment such that it will not be Impaired pursuant to section 1124 of the Bankruptcy Code; or (E) pursuant to and in accordance with sections 1129(a)(9)(C) and 1129(a)(9)(D) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Secured Priority Tax Claim payable in regular equal installment payments over a period ending not more than five (5) years after the Petition Date, plus simple interest at the rate required by applicable non-bankruptcy law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to in writing by a particular taxing authority and the Reorganized Debtor. Any installment payments to be made under clause (E) above shall be made in equal quarterly Cash payments beginning on December 31, 2022, and continuing quarterly thereafter until payment in full of the applicable Allowed Secured Priority Tax Claim. Notwithstanding the foregoing, if a Sale Trigger occurs, any holder of an Allowed Secured Priority Tax Claim that has not yet been paid in full shall instead receive payment from the proceeds of the Post-Confirmation Sale consistent with section 4.5 of the Plan.

**c. Class 3: Allowed Secured Texas Capital Bank Claim**

Class 3 consists of the Allowed Secured Texas Capital Bank Claim. Class 3 is Impaired by the Plan and the holder of the Allowed Secured Texas Capital Bank Claim is entitled to vote on the Plan.

The Allowed Secured Texas Capital Bank Claim shall be treated as follows:

(a) Texas Capital Bank shall have a final, Allowed Claim of \$10,765,636.13, subject to inclusion of additional interest from September 30, 2022 through the Confirmation Date (the “**Allowed Secured Texas Capital Bank Claim**”). Texas Capital Bank’s claim(s) for post-petition attorneys’ fees will be the subject of a claim or application per 11 U.S.C. §506(b) or other applicable Bankruptcy Code section, with all parties’ rights reserved as to such claim or application. Post-petition attorney’s fees allowed by the Bankruptcy Court shall be added to the Allowed Secured Texas Capital Bank Claim and payable in accordance with section 3.5.2 of the Plan.

(b) The holder of the Allowed Secured Texas Capital Bank Claim shall be paid (1) interest only for the first twelve months following the Effective Date based on a six year amortization schedule, (2) principal and interest during the thirteenth to forty-first months following the Effective Date based on a six year amortization schedule, and (3) a balloon payment during the forty-second month following the Effective Date. The Allowed Secured Texas Capital Bank Claim shall accrue interest at the Prime Rate plus 2.5% per annum from the Effective Date through the thirty-sixth month and at the Prime Rate plus 5% per annum from the thirty-seventh month through the forty-second month following the Effective Date. The Prime Rate shall be adjusted on the first business day of each month. Each installment shall be due on the first Business Day of the month beginning in the first full month following the Effective Date.

(c) Payment of the Allowed Secured Texas Capital Bank Claim shall be secured by the Texas Capital Bank Collateral pursuant to the terms of the New TCB Credit Documents. The New TCB Credit Documents shall reflect that Texas Capital Bank and Cargill shall retain all pre-existing liens which are fully perfected and first-priority (except for undeveloped acreage on the OSR-Halliday Unit upon which the proposed New Credit Facility Lender will be granted priming liens) and shall be granted blanket liens on all of the Reorganized Debtors’ Assets, including second liens on the Pruitt Project’s acreage and wells, which liens shall be subordinate to the New Credit Facility Lender, unless and until those prior liens are satisfied. On the Effective Date, the Reorganized Debtors shall be authorized to enter into and execute the New TCB Credit Documents substantially in the form contained in the Plan Supplement, and any related agreements or filing without the need for any further corporate or organizational action and without further action by or approval of the Bankruptcy Court.

(d) Until the Allowed Secured Texas Capital Bank Claim is repaid in full pursuant to paragraph (a) above, the Reorganized Debtors shall provide the following reporting to Texas Capital Bank:

(1) during the term of the Plan, within 30 days after the quarters ending March 31, June 30, September 30 and December 31, the Reorganized Debtors shall transmit to Texas Capital Bank (a) statements of assets and liabilities for the most recently ended quarter, (b) financial statements for the most recently ended quarter, and (c) financial projections for the upcoming quarter;

(2) within 45 days of June 30 and December 31 of each year during the term of the Plan, the Reorganized Debtors shall transmit to Texas Capital Bank an engineering reserve report of the Reorganized Debtors' oil and gas producing properties, and the reserve reports issued as of December 31 of each year during the term of the Plan shall thereafter be audited by a third party and a copy provided to Texas Capital Bank; and

(3) any reporting that the Reorganized Debtors are required to provide to the New Credit Facility Lender under the New Credit Facility Documents.

(e) Beginning twelve months after the Effective Date, if the Reorganized Debtors' Quarterly Net Cash Balance exceeds \$2 million, the Reorganized Debtors shall make an additional *pro rata* principal payment to Texas Capital Bank and Cargill in the amount by which the Reorganized Debtors' Quarterly Net Cash Balance exceeds \$2 million. The Reorganized Debtors shall make such payment within sixty (60) days following the end of any quarter in which the reporting reflects a Quarterly Net Cash Balance of greater than \$2 million.

(f) Except with the written consent of each of Texas Capital Bank, Cargill and the New Credit Facility Lender, until the Allowed Secured Cargill Claim and Allowed Secured Texas Capital Bank Claim is repaid in full, the Reorganized Debtors shall not obtain additional secured debt outside the ordinary course of business; provided, however, that the Reorganized Debtors are expressly permitted to enter into and to obtain (1) the New Credit Facility from the New Credit Facility Lender pursuant to the terms of the New Credit Facility Documents, (2) financing for normal course purchases through lease financing or other similar arrangements, and (3) replacement financing to make the final payments to Texas Capital Bank and Cargill during no later than the forty-second (42) month following the Effective Date.

(g) Notwithstanding the treatment of the Allowed Secured Texas Capital Bank Claim set forth in paragraph (b) above, if a Sale Trigger occurs, the holder of the Allowed Secured Texas Capital Bank Claim shall instead receive payment from the proceeds of the Post-Confirmation Sale consistent with section 4.5 of the Plan.

**d. Class 4: Allowed Secured Cargill Claim**

Class 4 consists of the holder of the Allowed Secured Cargill Claim. Class 4 is Impaired by the Plan and the holder of the Allowed Secured Cargill Claim is entitled to vote on the Plan.

The Allowed Secured Cargill Claim shall be treated as follows:

(a) Cargill shall have a final, Allowed Claim of \$1,170,487.02. Cargill's claim(s) for post-petition attorneys' fees will be the subject of a claim or application per 11 U.S.C. §506(b) or other applicable Bankruptcy Code section, with all parties' rights reserved as to such claim or application. Post-petition attorney's fees allowed



by the Bankruptcy Court shall be added to the Allowed Secured Cargill Claim and payable in accordance with section 3.6.2 of the Plan.

(b) The holder of the Allowed Secured Cargill Claim shall be paid (1) interest only for the first twelve months following the Effective Date based on a six year amortization schedule, (2) principal and interest during the thirteenth to forty-first months following the Effective Date based on a six year amortization schedule, and (3) a balloon payment during the forty-second month following the Effective Date. The Allowed Secured Cargill Claim shall accrue interest at the Prime Rate plus 2.5% per annum from the Effective Date through the thirty-sixth month and at the Prime Rate plus 5% per annum from the thirty-seventh month through the forty-second month following the Effective Date. The Prime Rate shall be adjusted on the first business day of each month. Each installment shall be due on the fifth day of the month (or the next immediately following Business Day if the fifth day is not a business day) beginning in the first full month following the Effective Date.

(c) Payment of the Allowed Secured Cargill Claim shall be secured by the Cargill Collateral pursuant to the terms of the New TCB Credit Documents. The New TCB Credit Documents shall reflect that Texas Capital Bank and Cargill shall retain all pre-existing liens which are fully perfected and first-priority (except for undeveloped acreage on the OSR-Halliday Unit upon which the proposed New Credit Facility Lender will be granted priming liens) and shall be granted blanket liens on all of the Reorganized Debtors' Assets, including second liens on the Pruitt Project's acreage and wells, which liens shall be subordinate to the New Credit Facility Lender, unless and until those prior liens are satisfied. On the Effective Date, the Reorganized Debtors shall be authorized to enter into and execute the New TCB Credit Documents substantially in the form contained in the Plan Supplement, and any related agreements or filing without the need for any further corporate or organizational action and without further action by or approval of the Bankruptcy Court.

(d) Until the Allowed Secured Cargill Claim is repaid in full pursuant to paragraph (b) above, the Reorganized Debtors shall provide the following reporting to Cargill:

(1) during the term of the Plan, within 30 days after the quarters ending March 31, June 30, September 30 and December 31, the Reorganized Debtors shall transmit to Cargill (a) statements of assets and liabilities for the most recently ended quarter, (b) financial statements for the most recently ended quarter, and (c) financial projections for the upcoming quarter;

(2) within 45 days of June 30 and December 31 of each year during the term of the Plan, the Reorganized Debtors shall transmit to Cargill an engineering reserve report of the Reorganized Debtors' oil and gas producing properties, and the reserve reports issued as of December 31 of each year during the term of the Plan shall thereafter be audited by a third party and a copy provided to Cargill; and

(3) any reporting that the Reorganized Debtors are required to provide to the New Credit Facility Lender under the New Credit Facility Documents.

(e) Beginning twelve months after the Effective Date, if the Reorganized Debtors' Quarterly Net Cash Balance exceeds \$2 million, the Reorganized Debtors shall make an additional *pro rata* principal payment to Texas Capital Bank and Cargill in the amount by which the Reorganized Debtors' Quarterly Net Cash Balance exceeds \$2 million. The Reorganized Debtors shall make such payment within sixty (60) days following the end of any quarter in which the reporting transmitted in paragraph (d)(1) reflects a Quarterly Net Cash Balance of greater than \$2 million.

(f) Except with the written consent of each of Texas Capital Bank, Cargill and the New Credit Facility Lender, until the Allowed Secured Cargill Claim and Allowed Secured Texas Capital Bank Claim is repaid in full, the Reorganized Debtors shall not obtain additional secured debt outside the ordinary course of business; provided, however, that the Reorganized Debtors are expressly permitted to enter into and to obtain (1) the New Credit Facility from the New Credit Facility Lender pursuant to the terms of the New Credit Facility Documents, (2) financing for normal course purchases through lease financing or other similar arrangements, and (3) replacement financing to make the final payments to Texas Capital Bank and Cargill during no later than the forty-second (42) month following the Effective Date.

(g) Notwithstanding the treatment of the Allowed Secured Cargill Claim set forth in paragraph (b) above, if a Sale Trigger occurs, the holder of the Allowed Secured Cargill Claim shall instead receive payment from the proceeds of the Post-Confirmation Sale consistent with section 4.5 of the Plan.

**e. Class 5: Allowed Other Secured Claims**

Class 5 consists of Allowed Other Secured Claims. Class 5 consists of separate subclasses for each Allowed Other Secured Claim that may exist against the Debtors. Class 5 is Impaired by the Plan and the holders of Allowed Other Secured Claims are entitled to vote on the Plan.

The Debtors do not currently believe that there will be any Allowed Other Secured Claims. However, to the extent there are any Allowed Other Secured Claims, such claims shall accrue interest at the rate of five percent (5%) per annum from the Effective Date. If the property securing an Allowed Other Secured Claim is sold, the holder of the Allowed Other Secured Claim shall be entitled to payment of such Claim from the sale proceeds. Otherwise, the holder of such Allowed Other Secured Claim shall be paid in full in Cash in sixteen (16) equal quarterly installments of principal and interest. Each installment shall be due on the last Business Day of the month following the end of each calendar quarter following the date that the Claim is determined to be an Allowed Other Secured Claim. Payment of each Allowed Other Secured Claim shall be secured by the applicable collateral securing such Claim. Each holder of an Allowed Other Secured Claim shall be entitled to assert a Class 7 General Unsecured Claim for any Deficiency Claim.

Notwithstanding the foregoing, if a Sale Trigger occurs, the holder of the Allowed Other Secured Claim shall instead receive payment from the proceeds of the Post-Confirmation Sale consistent with section 4.5 of the Plan.

**f. Class 6: Allowed Operator Claims**

Class 6 consists of all Allowed Operator Claims. Class 6 is Impaired by the Plan and the holders of Allowed Operator Claims are entitled to vote on the Plan.

Allowed Operator Claims shall include interest on past due amounts at the rate set forth in the applicable Joint Operating Agreement to the extent the holder of the Operator Claim has a valid and perfected lien on the Debtors' Assets subject thereto. Subject to the terms herein, each holder of an Allowed Operator Claim, in full satisfaction, settlement and release of and in exchange for all such Allowed Operator Claims, shall be entitled to receive (1) a payment equal to 33% of the Allowed Operator Claim within thirty (30) days after such claim becomes an Allowed Operator Claim, (2) a second payment equal to 33% of the Allowed Operator Claim within sixty (60) days after such claim becomes an Allowed Operator Claim, and (3) a payment equal to 34% of the Allowed Operator Claim within ninety (90) days after such claim becomes an Allowed Operator Claim. In no event shall a holder of an Allowed Operator Claim be entitled to collect any amount above the amount of such Allowed Operator Claim. At that time, the holder's Allowed Operator Claim will be fully satisfied and released.

**g. Class 7: General Unsecured Claims**

Class 7 consists of all Allowed General Unsecured Claims. Class 7 is Impaired by the Plan and the holders of Allowed General Unsecured Claims are entitled to vote on the Plan.

Subject to the terms of the Plan, each holder of an Allowed General Unsecured Claim, in full satisfaction, settlement and release of and in exchange for all such Allowed General Unsecured Claims, shall be entitled to receive (1) a payment equal to 33% of the Allowed General Unsecured Claim at the end of the tenth full month after the Effective Date, and (2) a second payment equal to 33% of the Allowed General Unsecured Claim at the end of the eleventh month after the Effective Date, and (3) a payment equal to 34% of the Allowed General Unsecured Claim at the end of the twelfth month after the Effective Date; provided, however, that if a Sale Trigger occurs before holders of Allowed General Unsecured Claims are paid in full, each holder of an Allowed General Unsecured Claim shall instead receive its *pro rata* share, if any, of the proceeds from the Post-Confirmation Sale of the Reorganized Debtors' Assets consistent with section 4.5 of the Plan. In no event shall a holder of an Allowed General Unsecured Claim be entitled to collect any amount above the amount of such Allowed General Unsecured Claim. At that time, the holder's Allowed General Unsecured Claim will be fully satisfied and released.

**h. Class 8: Suspense Claims**

Class 8 consists of all Allowed Suspense Claims. Class 8 is Impaired by the Plan and the holders of Allowed Suspense Claims are entitled to vote on the Plan.

Subject to the terms of the Plan, including Section 7.3.2 relating to minimum distribution amounts, each holder of an Allowed Suspense Claim, in full satisfaction, settlement and release of and in exchange for all such Allowed Suspense Claims, shall be entitled to receive twenty-four (24) equal quarterly payments beginning within ninety (90) days after such claim becomes an Allowed Suspense Claim; provided, however, that if a Sale Trigger occurs before holders of Allowed Suspense Claims are paid in full, each holder of an Allowed Suspense Claim shall instead receive its *pro rata* share, if any, of the proceeds from the Post-Confirmation Sale of the Reorganized Debtors' Assets consistent with section 4.5 of the Plan. In no event shall a holder of an Allowed Suspense Claim be entitled to collect any amount above the amount of such Allowed Suspense Claim. At that time, the holder's Allowed Suspense Claim will be fully satisfied and released.

i. **Class 9: Intercompany Claims**

Class 9 consists of all Intercompany Claims. Class 9 is Unimpaired by the Plan and the holders of Intercompany Claims are not entitled to vote on the Plan.

All Intercompany Claims shall be reinstated and shall be continue to be reflected on the books and records of the Reorganized Debtors.

j. **Class 10: Activa Class A Interests and Tiva Interests**

Class 10 consists of all Activa Class A Interests, Incentive Interests and all Tiva Interests. Class 10 is Unimpaired by the Plan and the holders of Activa Class A Interests, Incentive Interests and Tiva Interests are not entitled to vote on the Plan.

All holders of Activa Class A Interests and Tiva Interests shall retain their Interests. Until all holders of Allowed Claims in Classes 2 through 8 have received the Distributions to which they are entitled to under Sections 3.3 through 3.10 of the Plan, the Reorganized Debtors may not cause or permit Reorganized Debtors to: (a) declare or pay any dividends, purchase, redeem, retire, defease or otherwise acquire for value the Interests now or hereafter outstanding; or (b) make any distribution of assets, Interests, obligations or securities to its members. However, under the Plan, the Reorganized Debtors are not restricted from paying reasonable salaries and benefits to officers or employees of Reorganized Debtors or reimbursing officers or employees of Reorganized Debtors for ordinary and reasonable business expenses incurred on behalf of Reorganized Debtors.

k. **Class 11: Activa Class B Interests**

Class 11 consists of all Activa Class B Interests. Class 11 is Impaired by the Plan and the holder of Activa Class B Interests is not entitled to vote on the Plan.

Under the Plan and consistent with the Activa Company Agreement Amendment, all Activa Class B Interests shall be cancelled and the holder of the Activa Class B Interests will not receive any distribution or other remuneration on account of the Activa Class B Interests.

l. **Insurance**

Notwithstanding anything to the contrary in the Plan, if any Allowed Claim is covered by insurance, such Claim shall first be paid from such insurance with the balance, if any, treated in accordance with the provisions of the Plan governing the Class applicable to such Claim.

**B. Executory Contracts and Unexpired Leases**

**1. Assumption of Executory Contracts and Unexpired Leases**

On the Effective Date, all executory contracts and unexpired leases of the Debtors will be assumed by the Reorganized Debtors in accordance with, and subject to, the provisions and requirements of Sections 365 and 1123 of the Bankruptcy Code, except for those executory contracts and unexpired leases that:

- (1) have been assumed or rejected by prior order of the Bankruptcy Court;
- (2) are the subject of a motion to reject pending on the Effective Date;
- (3) are identified in the Plan Documents as being rejected; or
- (4) are rejected or terminated pursuant to the terms of this Plan.

Without amending or altering any prior order of the Bankruptcy Court approving the assumption or rejection of any executory contract or unexpired lease, entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

To the extent any provision in any executory contract or unexpired lease assumed or assumed and assigned (as applicable) pursuant to the Plan (including, without limitation, any “change of control” provision) prohibits, restricts or conditions, or purports to prohibit, restrict or condition, or is modified, breached or terminated, or deemed modified, breached or terminated by, (i) the commencement of the Chapter 11 Cases or the insolvency or financial condition of Debtors at any time before the closing of the Chapter 11 Cases, (ii) Debtors or Reorganized Debtors’ assumption or assumption and assignment (as applicable) of such executory contract or unexpired lease, or (iii) the Confirmation of the Plan, then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-debtor party thereto to modify or terminate such executory contract or unexpired lease or to exercise any other default-related rights or remedies with respect thereto, and any required consent under any such contract or lease shall be deemed satisfied by the Confirmation of the Plan.

Each executory contract and unexpired lease assumed and/or assigned pursuant to the Plan shall revert in and be fully enforceable by the Reorganized Debtors or the applicable assignee in accordance with its terms and conditions, except as modified by the provisions of the Plan, any order of the Bankruptcy Court approving its assumption and/or assignment, or applicable law.

The inclusion or exclusion of a contract or lease on any schedule or exhibit shall not constitute an admission by Debtors that such contract or lease is an executory contract or unexpired lease or that Debtors have any liability thereunder.

## **2. Cure of Defaults; Assignment of Executory Contracts and Unexpired Leases**

Any defaults under each executory contract and unexpired lease to be assumed, or assumed and assigned, pursuant to the Plan shall be satisfied, pursuant to and to the extent required by section 365(b)(1) of the Bankruptcy Code, by payment of the applicable default amount in Cash on the Effective Date or on such other terms as the Bankruptcy Court may order or the parties to such executory contracts or unexpired leases may otherwise agree in writing (the “**Cure Claim Amount**”).

In the event of an assumption, or an assumption and assignment, of an executory contract or unexpired lease under the Plan, at least twenty-one (21) days prior to the Confirmation Hearing, the Debtors shall file and serve upon counterparties to such executory contracts and unexpired leases, a notice of the proposed assumption, or proposed assumption and assignment, which will: (a) list the applicable Cure Claim Amount, if any; (b) if applicable, identify the party to which the executory contract or unexpired lease will be assigned; (c) describe the procedures for filing objections thereto; and (d) explain the process by which related disputes will be resolved by the Bankruptcy Court.

Any objection by a counterparty to an executory contract or unexpired lease to a proposed assumption, or proposed assumption and assignment, or any related cure amount must be filed, served and actually received by the Plan Proponents at least seven (7) days prior to the Confirmation Hearing (notwithstanding anything in the Schedules or a Proof of Claim to the contrary). Any non-Debtor party to an executory contract or unexpired lease that fails to object timely to the proposed assumption, or proposed assumption and assignment, or cure amount will be deemed to have consented to such matters and will be deemed to have forever released and waived any objection to such proposed assumption, proposed assumption and assignment, and cure amount. The Confirmation Order shall constitute an order of the Bankruptcy Court approving each proposed assumption, or proposed assumption and assignment, of executory contracts and unexpired leases pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

In the event of a dispute regarding (a) the amount of any cure payment, (b) the ability of Debtors or 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 assumed and assigned, or (c) any other matter pertaining to assumption or assignment, the applicable cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving such assumption, or assumption and assignment. If such objection is sustained by Final Order of the Bankruptcy Court, the Reorganized Debtors may elect to reject such executory contract or unexpired lease in lieu of assuming or assigning it. The Reorganized Debtors shall be authorized to effect such rejection by filing a written notice of rejection with the Bankruptcy Court and serving such notice on the applicable counterparty within ten (10) days of the entry of such Final Order.

Subject to any cure claims filed with respect thereto, assumption or assumption and assignment of any executory contract or unexpired lease pursuant to the Plan shall result in the full



release and satisfaction of any Claims or defaults, 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 prior to the effective date of assumption or assumption and assignment, in each case as provided in section 365 of the Bankruptcy Code. Any Proofs of Claim filed with respect to an executory contract or unexpired lease that has been assumed or assumed and assigned by Final Order shall be deemed disallowed and expunged (subject to any cure claims filed with respect thereto), without further notice to or action, order, or approval of the Bankruptcy Court.

### **3. Rejection of Executory Contracts and Unexpired Leases**

The Plan Proponents reserve the right, at any time prior to the Effective Date, except as otherwise specifically provided in the Plan, to seek to reject any contract or lease to which Debtors are a party and to file a motion requesting authorization for the rejection of any such contract or lease. The Confirmation Order shall constitute an order of the Bankruptcy Court approving the rejections described in Article V of the Plan pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. Rejection of any executory contract or unexpired lease pursuant to the Plan or otherwise shall not constitute a termination of any preexisting obligations owed to the Debtors or the Reorganized Debtors, as applicable, under such executory contracts or unexpired leases.

### **4. Claims on Account of the Rejection of Executory Contracts and Unexpired Leases**

All Proofs of Claim with respect to Claims arising from the rejection of executory contracts or unexpired leases, pursuant to the Plan or the Confirmation Order, if any, must be filed with the Bankruptcy Court within twenty-eight (28) days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection.

Any Entity that is required to file a Proof of Claim arising from the rejection of an executory contract or an unexpired lease that fails to timely do so shall be forever barred, estopped and enjoined from asserting such Claim, and such Claim shall not be enforceable, against the Debtors, the Reorganized Debtors or the Estates and the Debtors, the Reorganized Debtors and their Estates and their Assets and property shall be forever discharged from any and all indebtedness and liability with respect to such Claim unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article IX of the Plan. To the extent applicable, the limitations imposed by section 502 of the Bankruptcy Code shall apply to the relevant rejection Claim, including, without limitation, subsection 502(b)(6) and subsection 502(b)(7) thereof.

### **5. Surety Bond Obligations**

Notwithstanding any other provisions of the Plan or any order of the Bankruptcy Court, on the Effective Date, all rights and obligations related to the (i) Debtors' current surety bonds issued by Lexon Insurance Company ("**Surety**") and maintained in the ordinary course of business; (ii) surety payment and indemnity agreements, setting forth the Surety's rights against the Debtors,

and the Debtors' obligations to pay and indemnify the Surety from any loss, cost, or expense that the Surety may incur, in each case, on account of the issuance of any surety bonds on behalf of the Debtors; (iii) surety collateral agreements governing collateral, if any, in connection with the Debtors' surety bonds; and/or (iv) ordinary course premium payments to the Surety for the Debtors' surety bonds (collectively, the "**Surety Bond Program**," and the Debtors' obligations arising therefrom, the "**Surety Bond Obligations**") shall be reaffirmed and ratified by the applicable Reorganized Debtors and continue in full force and effect and are not discharged, enjoined or released by the Plan in any way. Notwithstanding the foregoing, the Reorganized Debtors shall be under no obligations to continue the Surety Bond Program with the Surety once the current surety bonds expire during the ordinary course of business.

#### **6. Extension of Time to Assume or Reject**

Notwithstanding anything to the contrary set forth in Article V of the Plan, in the event of a dispute as to whether a contract is executory or a lease is unexpired, the right of the Reorganized Debtors to move to assume or reject such contract or lease shall be extended until the date that is ten (10) days after entry of a Final Order by the Bankruptcy Court determining that the contract is executory or the lease is unexpired. The deemed assumption provided for in Article V of the Plan shall not apply to any such contract or lease, and any such contract or lease shall be assumed or rejected only upon motion of the Reorganized Debtors following the Bankruptcy Court's determination that the contract is executory or the lease is unexpired.

#### **7. Treatment of Certain Insurance Policies**

Nothing in the Plan, including any releases, shall diminish or impair the enforceability of any policies of insurance that cover claims against the Debtors or any other Person subject to the occurrence of the Effective Date.

### **C. Implementation of the Plan:**

#### **1. Vesting of Assets**

Except as otherwise expressly provided in the Plan, the Confirmation Order, or any Plan Document, pursuant to sections 1123(a)(5), 1123(b)(3), 1141(b) and (c) and other applicable provisions of the Bankruptcy Code, on and after the Effective Date, all property and Assets of the Estates of the Debtors, and any other Assets or property acquired by the Debtors or the Reorganized Debtors during the Chapter 11 Cases or under or in connection with the Plan shall vest in the Reorganized Debtors free and clear of all Claims, Liens, charges, and other encumbrances, subject to the Plan Documents. On and after the Effective Date, the Reorganized Debtors may (i) operate their respective business, (ii) use, acquire, and dispose of their respective property, and (iii) compromise or settle any Claims, in each case without notice to, supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than restrictions expressly imposed by the Plan or the Confirmation Order.



It is the intent of the Plan to have the Debtors' current NOLs, loss carry-forwards, and/or other tax attributes survive throughout the life of the Plan. The Debtors' NOLs, loss carry-forwards, and/or other tax attributes will be retained by the Reorganized Debtors.

All Intercompany Claims between the Debtors as of the Effective Date shall be reinstated.

## **2. Exit Financing: New Credit Facility**

The Debtors have negotiated the terms and conditions of the New Credit Facility with the New Credit Facility Lender, which will be in the amount of \$4.87 million, inclusive of the balance of the DIP Claims. Those terms and conditions will be reflected in documents filed in connection with the Plan Supplement and shall be incorporated in the Plan by reference in their entirety. A term sheet setting forth the general proposed terms of the New Credit Facility is attached hereto as **Exhibit D**.

The proceeds of the New Credit Facility shall be used solely for new development as set forth in the New Credit Facility Documents and shall not be used for any other corporate purposes by the Reorganized Debtors. As set forth more fully above in Section VI.B, it is anticipated that the Reorganized Debtors will use \$1.75 million of the New Credit Facility to fund a well on the OSR-Halliday Unit shortly after the Effective Date and will use \$2.8 million of the New Credit Facility to fund eight wells plus land acquisition on the Pruitt Project beginning shortly after the Effective Date. The Reorganized Debtors will use 80% of the net operating revenue from the wells drilled using the proceeds of the New Credit Facility as well as 80% of the net operating revenue from the Ruple 1H and Ruple 2H to repay the New Credit Facility. The remaining 20% of net operating revenue from these wells will be used to fund operations and make payments required by the Plan. Under the Plan and the New Credit Facility Documents, the Reorganized Debtors will also drill wells on the OSR-Halliday Unit and the Pruitt Project using their other available cash flow. It is anticipated that, under the terms of the New Credit Facility, the Reorganized Debtors will fund 80% of their costs of drilling these wells and that the New Credit Facility Lender will directly fund the remaining 20% of the costs of drilling these wells. Upon full repayment of the New Credit Facility, the New Credit Facility Lender will be granted 20% of the Reorganized Debtors' right, title, and interest in the new wells drilled using the proceeds of the New Credit Facility or for which the New Credit Facility Lender funded 20% of the drilling costs.

Collateral for the New Credit Facility will include the Debtors' Pruitt Project Assets as well as the Debtors' OSR-Halliday Unit Assets, excluding existing wellbores, production and facilities that are subject to the prior lien of Texas Capital Bank and Cargill. If the Reorganized Debtors default under the New Credit Facility Documents and do not timely cure such defaults, the Reorganized Debtors shall be required to assign 100% of their right, title and interests in the New Credit Facility Collateral to the New Credit Facility Lender.

The New Credit Facility will prime the liens of Texas Capital Bank and Cargill, but only with respect to undeveloped acreage on the OSR-Halliday Unit. In today's market and in the experience of the Debtors' management, potential purchasers of oil and gas assets as well as potential lenders to oil and gas companies are unwilling to attribute any significant value to this type of proved but undeveloped acreage. Neither Texas Capital Bank nor Cargill have expressed any interests in funding the development of this acreage. Accordingly, the Debtors believe that

the priming of Texas Capital Bank's and Cargill's liens by the New Credit Facility is minimal and more than offset by the second lien that both secured lenders will retain on the OSR-Halliday Unit Assets as well as the second lien that both secured lenders will be granted on the Pruitt Project Assets.

On the Effective Date of the Plan, the Reorganized Debtors shall be authorized to enter into the New Credit Facility and execute the New Credit Facility Documents substantially in the form contained in the Plan Supplement, and any related agreements or filing without the need for any further corporate or organizational action and without further action by or approval of the Bankruptcy Court.

The Bankruptcy Court's confirmation of the Plan shall be deemed approval of the New Credit Facility (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred and fees paid by the Debtors or the Reorganized Debtors in connection therewith), to the extent not approved by the Bankruptcy Court previously, and the Reorganized Debtors will be authorized to execute and deliver those documents necessary or appropriate to obtain the New Credit Facility, without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Reorganized Debtors may deem to be necessary to consummate entry into the New Credit Facility.

On the Effective Date, (a) upon the granting of Liens in accordance with the New Credit Facility, the New Credit Facility Lender shall have valid, binding and enforceable Liens on the collateral specified in the New Credit Facility Documents, including, without limitation, a senior lien on the undeveloped portions of the OSR-Halliday Unit; and (b) upon the granting of mortgages, pledges, Liens and other security interests in accordance with the New Credit Facility Documents, the mortgages, pledges, Liens and other security interests granted to secure the obligations arising under the New Credit Facility shall be granted in good faith and shall be deemed not to constitute a fraudulent conveyance or fraudulent transfer, shall not otherwise be subject to avoidance, and the priorities of such Liens and security interests shall be as set forth in the New Credit Facility Documents.

Until the payment in full of the Allowed Secured Texas Capital Bank Claim and the Allowed Secured Cargill Claim, the Reorganized Debtors shall provide notice of any defaults under the New Credit Facility Documents to Texas Capital Bank and Cargill. The New Credit Facility Documents shall require the Reorganized Debtors to provide immediate notice to Texas Capital Bank and Cargill (1) in the event of the occurrence of an Underpaid Month and (2) if the subsequent payment of 100% of the Net Cash Flow from the Program Wells does not equal 1.39% of the Outstanding Facility Balance (all as defined in the New Credit Facility Documents). In addition, until the payment in full of the Allowed Secured Texas Capital Bank Claim, the Reorganized Debtors shall consult with Texas Capital Bank on the proposed terms of any waivers of any material defaults by the New Credit Facility Lender or proposed amendments to the New Credit Facility Documents detrimental to the interests of Texas Capital Bank and/or Cargill. The terms of such waivers or amendments shall be subject to Texas Capital Bank's agreement, which agreement shall not be unreasonably withheld. To the extent Texas Capital Bank withholds such

agreement, the Bankruptcy Court shall hold an emergency hearing thereon and the parties shall not object to the expedited setting.

Texas Capital Bank may, but is not obligated to, cure or payoff any default under the New Credit Facility by Reorganized Debtors, with Texas Capital Bank subrogated to the New Credit Facility Lender's position if cured or paid-off.

Any material defaults under the New Credit Facility Documents shall also be defaults under the New TCB Credit Documents. For the avoidance of doubt, defaults giving rise to Sale Triggers are material defaults.

### **3. Performance Requirements**

During the term of the Plan, until the Allowed Texas Capital Bank Claim and Allowed Cargill Claim are paid in full, the Reorganized Debtors will be required to meet certain performance requirements, including the "Debt Coverage Ratio Milestones" and the "Exit Facility Milestones".

The Debt Coverage Ratio Milestones require the Reorganized Debtors to, in general, have an EBITDAX to Funded Debt ratio of 3.5 to 1.0 by December 31, 2023, an EBITDAX to Funded Debt ratio of 2.75 to 1.0 by December 31, 2024, and an EBITDAX to Funded Debt ratio of 2.25 to 1.0 by December 31, 2025, all in accordance with the formulas set forth in the Plan. The Debt Coverage Ratio Milestones also require the Reorganized Debtors to, once annually beginning on December 31, 2024, have a net present worth, discounted at 10 percent per annum, that exceeds outstanding Funded Debt.

The Exit Facility Milestones require the Reorganized Debtors to meet certain performance requirements set forth in the New Credit Facility Documents. The Exit Facility Milestones are summarized in pages 3-4 of **Exhibit D** hereto. In general, the Exit Facility Milestones require the Reorganized Debtors to obtain authorizations for expenditures for the OSR PUD 1 well from Woodine and for the Pruitt 3H and Pruitt 4H PUD wells from BlackBrush by October 31, 2023. This deadline can be extended by 120 days because of the inability of the applicable operator to obtain rigs, pipe, other equipment or materials or other supply chain issues. The Exit Facility Milestones further require that the production from the OSR PUD 1, Pruitt 3H, and Pruitt 4H be not less than 70% of the forecasted hydrocarbon volumes for such well as set forth in the Haas Report. Finally, the Exit Facility Milestones prohibit the Reorganized Debtors from permitting there to be three consecutive Underpaid Months (as further summarized in **Exhibit D** and as will be set forth in full in the New Credit Facility Documents).

The Reorganized Debtors are also required to limit their general and administrative expenses to no more than \$2 million in 2023, no more than \$2.163 million in 2024, and no more than \$2.347 million in 2025.

Finally, within 90 days after the Effective Date of the Plan, the Reorganized Debtors need to procure hedges on 50% of production from wells on which Texas Capital Bank and Cargill retain a first lien after confirmation of the Plan for 24 months. These hedges need to be refreshed

not less than every 6 months. However, it is not a default under either the Plan or the New TCB Credit Documents if (1) the Debtors are unable to obtain hedges at a reasonable cost per contract based upon the prevailing market conditions and underwriting standards then available, or (2) the Debtors' proposed hedge provider, on the one hand, and Texas Capital Bank and Cargill, on the other hand, are not able to agree to the terms of any subordination agreement, intercreditor agreement, or other similar agreement necessary for the Reorganized Debtors to obtain such hedges. If the Reorganized Debtors are unable to procure hedges as outlined in the Plan, then the Reorganized Debtors must continue to try to procure hedges monthly until the payment in full of the Allowed Secured Texas Capital Bank Claim.

#### **4. Post-Confirmation Sale**

If the Reorganized Debtors are not able to meet any of the Debt Coverage Ratio Milestones or any of the Exit Facility Milestones, a "Sale Trigger" shall occur under the Plan. If a Sale Trigger occurs, the Reorganized Debtors shall proceed with the Post-Confirmation Sale, which is expected to occur pursuant to the following timeline:

- The Reorganized Debtors shall begin the sale process within thirty days after a Sale Trigger occurs, including providing timely notice to Holders of Allowed Claims that have not yet been paid in full that the Post-Confirmation Sale process has commenced. The sale procedures proposed by the Debtors must contain provisions (1) requiring the proposed buyer(s) to apportion specific value to the purchased assets to ensure that secured parties receive payment from the sale of their collateral, and (2) incorporating the protections afforded to Texas Capital Bank and Cargill in the Final Cash Collateral Order, including the right to credit bid. The sale procedures shall be subject to the approval of Texas Capital Bank in all respects, which approval shall not be unreasonably withheld.
- The Reorganized Debtors will engage the Investment Banker to assist in the sale process within thirty days after a Sale Trigger occurs.
- The Investment Banker will then engage in due diligence for approximately 3-4 weeks that will include analyzing the Reorganized Debtors' technical, production, and land and accounting data, preparing all sales materials, and creating a virtual data room.
- The Investment Banker will then engage in a marketing period of 4-5 weeks that will include, among other things, identifying prospective buyers, distributing marketing packages, facilitating data room presentations, and soliciting initial offers.
- The Investment Banker will then assist the Reorganized Debtors in negotiating and closing the sale.
- Any asset purchase agreement(s) executed in connection with the Post-Confirmation Sale must contain provisions that apportion specific value to

purchased assets, in order to ensure that secured parties receive payment from the sale of their collateral.

Absent the consent of Texas Capital Bank, Cargill and the New Credit Facility Lender or an order of the Bankruptcy Court otherwise, the Reorganized Debtors shall complete the Post-Confirmation Sale process within 180 days after the Investment Banker is engaged and shall proceed to distribute the proceeds from the Post-Confirmation Sale, after deducting any remaining operational costs, the costs of the sale itself including payment of a success fee to the Investment Banker (which is anticipated to be the greater of \$350,000 or 3% of the aggregate consideration obtained from the sale of the Reorganized Debtors' Assets), and any remaining priority or administrative claims, to Holders of Allowed Claims on a *pro rata* basis in accordance with the priority of treatment of such Allowed Claims. Secured creditors shall only receive payment from the proceeds of their collateral. Notwithstanding the foregoing, the ultimate sale procedures shall be subject to approval of Texas Capital Bank, Cargill and the New Credit Facility Lender, which approval shall not be unreasonably withheld.

#### **D. Survival of Activa and Tiva**

Activa and Tiva will, as Reorganized Debtors, continue to exist after the Effective Date as limited liability companies with all the powers of a limited liability company pursuant to applicable law and the Company Agreement Amendments.

Except as otherwise expressly provided in the Plan, the Confirmation Order, or any Plan Document, pursuant to sections 1123(a)(5), 1123(b)(3), 1141(b) and (c) and other applicable provisions of the Bankruptcy Code, on and after the Effective Date, all property and Assets of the Estates of the Debtors, and any other Assets or property acquired by the Debtors or the Reorganized Debtors during the Chapter 11 Cases or under or in connection with this Plan shall vest in the Reorganized Debtors free and clear of all Claims, Liens, charges, and other encumbrances, subject to the Plan Documents. On and after the Effective Date, the Reorganized Debtors may (i) operate their respective business, (ii) use, acquire, and dispose of their respective property, and (iii) compromise or settle any Claims, in each case without notice to, supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than restrictions expressly imposed by this Plan or the Confirmation Order.

#### **E. Preservation of Causes of Action**

Except as otherwise provided in Article IV or elsewhere in the Plan or the Confirmation Order, and subject to the terms of the Final Cash Collateral Order, after the Effective Date, any and all applicable Causes of Action and Avoidance Actions, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding filed in the Chapter 11 Cases shall vest in the Reorganized Debtors. The Reorganized Debtors shall have the exclusive right to enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all applicable Causes of Action and Avoidance Actions without notice to or approval from the Bankruptcy Court. While all Causes of Actions shall be preserved and shall vest in the Reorganized Debtors, the Debtors do not currently intend to pursue any Causes of Action.

In the event the Debtors ultimately were required to pursue the Post-Confirmation Sale, the Debtors would likely sell the Causes of Action, to the extent the statute of limitations on such Causes of Action had not yet expired, to the purchaser of their assets. Such purchaser may then decide whether or not to pursue the Causes of Action.

**F. Plan Distributions**

**1. Disputed Claims Procedures**

**a. Allowance of Claims**

After the Effective Date, the Reorganized Debtors shall have and shall retain any and all available rights and defenses that the Debtors had with respect to any Claim, including, without limitation, the right to assert any objection to Claims based on the limitations imposed by section 502 of the Bankruptcy Code. The Reorganized Debtors may contest the amount and validity of any Disputed Claim or contingent or unliquidated Claim in the ordinary course of business in the manner and venue in which such Claim would have been determined, resolved or adjudicated if the Chapter 11 Cases had not been commenced or in the Bankruptcy Court and may also object to such Claims in the Bankruptcy Court.

**2. Prosecution of Objections to Claims**

After the Effective Date, the Reorganized Debtors shall have the exclusive authority to file objections to Claims and settle, compromise, withdraw or litigate to judgment objections to any and all Claims, regardless of whether such Claims are in an Unimpaired Class or otherwise; provided, however, this provision of the Plan shall not apply to Professional Fee Claims, which may be objected to by any party-in-interest in these Chapter 11 Cases. From and after the Effective Date, the Reorganized Debtors may settle or compromise any Disputed Claim without any further notice to or action, order or approval of the Bankruptcy Court.

**3. Estimation of Claims**

After the Effective Date, the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any Disputed Claim or contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any such Claims, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection. 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. The rights and objections of all parties are reserved in connection with any such estimation.

**4. Deadline to File Objections to Claims**



Any objections to Claims shall be filed by no later than the Claims Objection Deadline, which is generally 180 days after the Effective Date unless extended by the Bankruptcy Court; provided that nothing contained herein shall limit the Reorganized Debtors' right to object to Claims, if any, filed or amended after the Claims Objection Deadline. Moreover, notwithstanding the expiration of the Claims Objection Deadline, the Reorganized Debtors shall continue to have the right to amend any claims objections and to file and prosecute supplemental objections and counterclaims to a Disputed Claim until such Disputed Claim is or becomes an Allowed Claim pursuant to Final Order of the Bankruptcy Court.

**5. No Distribution Pending Allowance**

Notwithstanding any other provision of the Plan to the contrary, no payments or Distributions of any kind or nature shall be made with respect to all or any portion of a Claim or a Disputed Claim unless and until all objections to such Claim or Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Claim or Disputed Claim has become an Allowed Claim pursuant to a Final Order.

**6. Distributions on Account of Disputed Claims Once They Are Allowed and Additional Distributions on Account of Previously Allowed Claims**

Beginning within thirty days of when a Claim or Disputed Claim becomes an Allowed Claim, the Reorganized Debtors will make Distributions on account of such Claim or Disputed Claim that has become an Allowed Claim pursuant to the applicable provisions of Article VII of this Plan.

**7. Disputed Claims Reserve**

The Reorganized Debtors shall establish the Disputed Claims Reserve. The Disputed Claims Reserve shall equal an amount of Cash equal to 100% of Distributions to which holders of such Disputed Claims in each applicable Class would be entitled (if at all) under the Plan as of such date if such Disputed Claims were Allowed Claims in their respective Face Amount (or based on the Debtor's books and records if the applicable holder has not yet filed a Proof of Claim and the applicable Bar Date has not yet expired); provided, however, that the Reorganized Debtors shall have the right to file a motion seeking to estimate any Disputed Claims in accordance with Section 6.1.3 of the Plan.

**8. Provisions Governing Distributions**

**a. Distributions for Claims Allowed as of the Effective Date**

Except as otherwise provided, Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made in accordance with Section 7.3 of the Plan. Any payment or Distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Distributions on account of Disputed Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Section 6.3 of the Plan.



**b. No Post-Petition Interest on Claims**

Unless otherwise specifically provided for in the Plan, the Confirmation Order or Final Order of the Bankruptcy Court, or required by applicable bankruptcy law (including, without limitation, as required pursuant to section 506(b) or section 511 of the Bankruptcy Code), post-petition interest shall not accrue or be paid on any Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim.

**c. Delivery and Distributions; Undeliverable or Unclaimed Distributions**

The Reorganized Debtors shall make Distributions to holders of Allowed Claims, or in care of their authorized agents, as appropriate, at the address for each such holder or agent as indicated on the Reorganized Debtors' books and records as of the date of any such Distribution; provided that the address for each holder of an Allowed Claim shall be deemed to be the address set forth in the latest Proof of Claim filed by such holder pursuant to Bankruptcy Rule 3001 as of the Distribution Date.

Notwithstanding anything herein to the contrary, no interim Distribution shall be made on account of an Allowed Claim that is Impaired under the Plan if the amount of the Distribution is less than \$25.00, unless such Distribution is a final Distribution.

If the Distribution to any holder of an Allowed Claim is returned to the Reorganized Debtors as undeliverable or is otherwise unclaimed, no further Distributions shall be made to such holder unless and until the Reorganized Debtors are notified in writing of such holder's then current address, at which time all currently due but missed Distributions shall be made to such holder. Undeliverable Distributions shall remain in the possession of the Reorganized Debtors until such time as any such Distributions become deliverable. Undeliverable Distributions shall not be entitled to any additional interest, dividends or other accruals of any kind on account of the Distribution being undeliverable.

Any holder of an Allowed Claim (or any successor or assignee claiming by, through, or on behalf of, such holder) that does not assert a right pursuant to the Plan for an undeliverable or unclaimed Distribution within one hundred eighty days (180) days of the date such Distribution is due shall be deemed to have forfeited its rights for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such rights for an undeliverable or unclaimed Distribution against the Reorganized Debtors and their Assets. Any undeliverable or unclaimed Distributions shall become the property of the Reorganized Debtors free and clear of any Claims notwithstanding any federal or state escheat laws to the contrary. Nothing contained in the Plan shall require the Debtors or the Reorganized Debtors to attempt to locate any holder of an Allowed Claim.

Checks issued by the Reorganized Debtors on account of Allowed Claims shall be null and void if not negotiated within 120 days after the issuance of such check. Any holder of an Allowed Claim holding an un-negotiated check that does not request reissuance of such un-negotiated check within 180 days after the date of mailing or other delivery of such check shall have its Claim for

such un-negotiated check discharged and be forever barred, estopped and enjoined from asserting any such Claim against the Reorganized Debtors and their Assets. Any such Distribution shall become the property of the Reorganized Debtors and shall be distributed to Reorganized Debtors, free and clear of any Claims notwithstanding any federal or state escheat laws to the contrary.

All Persons holding Claims shall be required to provide Reorganized Debtors with an executed IRS Form W-9. No Distribution shall be made on account of a claim until the holder of such claim complies with this section. Any claim for Distribution under the Plan shall be forfeited and barred if this section is not complied with within 1 year of the Effective Date, on account of such Distribution.

## **G. Discharge, Injunction, Indemnity, Exculpation**

### **1. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or the Confirmation Order, effective as of the Effective Date, all consideration distributed under the Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims, interests and Causes of Action of any kind or nature whatsoever against the Debtors or any of their assets or properties, and regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims, interests or Causes of Action.

Except as otherwise expressly provided by the Plan or the Confirmation Order, upon the Effective Date, the Debtors and their Estates shall be deemed discharged and released under and to the fullest extent provided under sections 524 and 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code. Such discharge shall void any judgment obtained against the Debtors or the Reorganized Debtors at any time, to the extent that such judgment relates to a discharged Claim.

Except as otherwise expressly provided by the Plan or the Confirmation Order, upon the Effective Date: (i) the rights afforded in the Plan and the treatment of all Claims and interests shall be in exchange for and in complete satisfaction, settlement, discharge, and release of all Claims and interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors, or any of their assets, property, or Estates; (ii) all Claims and interests shall be satisfied, discharged, and released in full, and the Debtors' liability with respect thereto shall be extinguished completely without further notice or action, and (iii) all Entities shall be precluded from asserting against the Debtors, the Estates, the Reorganized Debtors, each of their respective successors and assigns, and each of their respective assets and properties, any such Claims or interests, whether based upon any documents, instruments or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date or otherwise.

## **2. Exculpation**

Under the Plan, effective as of the Effective Date, the Plan Proponents shall neither have nor incur any liability to any Entity for any claims or Causes of Action arising on or after the Petition Date and prior to or on the Effective Date for any act taken or omitted to be taken in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the Confirmation or consummation of 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 of the Debtors, the approval of the Disclosure Statement or Confirmation or consummation of the Plan; provided, however, that the foregoing provisions of the exculpation, as set forth in the Plan, shall not operate to waive or release: (i) any Causes of Action arising from gross negligence, actual fraud or willful misconduct of such applicable Plan Proponent as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; (ii) the rights of any Entity to enforce the Plan and the contracts, instruments, releases, and other agreements or documents delivered under or in connection with the Plan or assumed pursuant to the Plan or assumed pursuant to Final Order of the Bankruptcy Court; and/or (iii) any objections with respect to any Fee Claim; provided, further, that each Plan Proponent shall be entitled to rely upon the advice of counsel concerning its respective duties pursuant to, or in connection with, the above referenced documents, actions or inactions.

The foregoing exculpation shall be effective as of the Effective Date 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.

## **3. Injunction**

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, AS OF THE CONFIRMATION DATE, BUT SUBJECT TO THE OCCURRENCE OF THE EFFECTIVE DATE, ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS OR INTERESTS ARE, WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS, PERMANENTLY ENJOINED AFTER THE CONFIRMATION DATE FROM: (I) COMMENCING, CONDUCTING OR CONTINUING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY SUIT, ACTION OR OTHER PROCEEDING OF ANY KIND (INCLUDING ANY PROCEEDING IN A JUDICIAL, ARBITRAL, ADMINISTRATIVE OR OTHER FORUM) AGAINST OR AFFECTING THE DEBTORS, THE REORGANIZED DEBTORS, THE ESTATES OR ANY OF THEIR PROPERTY, OR ANY DIRECT OR INDIRECT TRANSFEREE OF ANY PROPERTY OF OR DIRECT OR INDIRECT SUCCESSOR IN INTEREST TO, ANY OF THE FOREGOING PERSONS OR ANY PROPERTY OF ANY SUCH TRANSFEREE OR SUCCESSOR; (II) ENFORCING, LEVYING, ATTACHING (INCLUDING ANY PRE-JUDGMENT ATTACHMENT), COLLECTING OR OTHERWISE RECOVERING BY ANY MANNER OR MEANS, WHETHER DIRECTLY OR INDIRECTLY, ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, OR THE ESTATES OR ANY OF THEIR PROPERTY, OR ANY DIRECT OR INDIRECT TRANSFEREE OF ANY PROPERTY OF OR

DIRECT OR INDIRECT SUCCESSOR IN INTEREST TO, ANY OF THE FOREGOING PERSONS, OR ANY PROPERTY OF ANY SUCH TRANSFEREE OR SUCCESSOR; (III) CREATING, PERFECTING OR OTHERWISE ENFORCING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY LIEN AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, OR THE ESTATES OR ANY OF THEIR PROPERTY, OR ANY DIRECT OR INDIRECT TRANSFEREE OF ANY PROPERTY OF OR SUCCESSOR IN INTEREST TO, ANY OF THE FOREGOING PERSONS; (IV) ACTING OR PROCEEDING IN ANY MANNER, IN ANY PLACE WHATSOEVER, THAT DOES NOT CONFORM TO OR COMPLY WITH THE PROVISIONS OF THE PLAN TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW; AND (V) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN; PROVIDED, HOWEVER, THAT NOTHING CONTAINED HEREIN SHALL PRECLUDE ANY PERSON FROM EXERCISING ITS RIGHTS, OR OBTAINING BENEFITS, PURSUANT TO AND CONSISTENT WITH THE PROVISIONS OF THE PLAN, THE PLAN SUPPLEMENT, THE PLAN DOCUMENTS AND ANY OTHER CONTRACTS, INSTRUMENTS, RELEASES, AGREEMENTS AND DOCUMENTS DELIVERED IN CONNECTION WITH THE PLAN. ALL INJUNCTIONS OR STAYS PROVIDED FOR IN THE CHAPTER 11 CASES UNDER SECTION 105 OR SECTION 362 OF THE BANKRUPTCY CODE, OR OTHERWISE, AND IN EXISTENCE ON THE CONFIRMATION DATE, SHALL REMAIN IN FULL FORCE AND EFFECT.

#### **4. Binding Nature of Plan**

ON THE EFFECTIVE DATE, AND EFFECTIVE AS OF THE EFFECTIVE DATE, THE PLAN SHALL BIND, AND SHALL BE DEEMED BINDING UPON, THE DEBTORS, THE REORGANIZED DEBTORS, ANY AND ALL HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS, ALL ENTITIES THAT ARE PARTIES TO OR ARE SUBJECT TO THE SETTLEMENTS, COMPROMISES, RELEASES, DISCHARGES, AND INJUNCTIONS DESCRIBED IN THE PLAN, EACH ENTITY ACQUIRING PROPERTY UNDER THE PLAN, ANY AND ALL NON-DEBTOR PARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES WITH THE DEBTORS AND THE SUCCESSORS AND ASSIGNS OF EACH OF THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING WHETHER OR NOT SUCH ENTITY: (I) WILL RECEIVE OR RETAIN ANY PROPERTY, OR INTEREST IN PROPERTY, UNDER THIS PLAN; (II) HAS FILED A PROOF OF CLAIM OR INTEREST IN THE CHAPTER 11 CASES OR; (III) FAILED TO VOTE TO ACCEPT OR REJECT THIS PLAN, AFFIRMATIVELY VOTED TO REJECT THIS PLAN OR IS CONCLUSIVELY PRESUMED TO REJECT THIS PLAN.

#### **5. Protection Against Discriminatory Treatment**

The Plan provides that, to the extent provided by section 525 of the Bankruptcy Code and the Supremacy Clause of the United States Constitution, all Entities, including Governmental Units, shall not discriminate against the Reorganized Debtors, or deny, revoke, suspend or refuse to renew a license, permit, charter, franchise or other similar grant to, condition such a grant to, discriminate with respect to such a grant, against the Reorganized Debtors, solely because Debtors

have been debtors under chapter 11 of the Bankruptcy Code, have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge) or have not paid a debt that is dischargeable in the Chapter 11 Cases.

#### **H. Conditions to Effectiveness of Plan**

Confirmation of the Plan is conditioned upon the Confirmation Order being in a form and substance acceptable to the Debtors.

The Plan may not be consummated, and the Effective Date shall not occur, unless and until each of the conditions set forth below is satisfied:

- a. the Confirmation Order shall be in a form and substance acceptable to the Debtors;
- b. the Confirmation Order shall not then be stayed, vacated, or reversed or shall not have been amended without the agreement of the Debtors; and
- c. the Confirmation Order shall not then be subject to a pending appeal, and the time to appeal or seek review or rehearing or leave to appeal has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending.

If each of the conditions to the occurrence of the Effective Date has not been satisfied or duly waived in accordance with the Plan on or before the first Business Day that is more than sixty (60) days after the Confirmation Date, or such later date as shall be agreed to by the Debtors, the Plan Proponents may schedule a status hearing with the Bankruptcy Court. If the Confirmation Order is ultimately vacated, the Plan shall be null and void in all respects, and nothing contained in the Plan shall constitute an admission, a waiver, or release of any Claims against or interests in the Estates.

#### **I. Other Plan Provisions**

##### **1. Retention of Jurisdiction**

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, on and after the Effective Date, retain exclusive jurisdiction over the Chapter 11 Cases and all Entities with respect to all matters related to the Chapter 11 Cases, the Debtors and the Plan as legally permissible, as set forth more fully in Article X of the Plan.

##### **2. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in the Plan: (a) the Plan Proponents reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan prior to the entry of the Confirmation Order; and

(b) after the entry of the Confirmation Order, the Reorganized Debtors may, upon order of the Bankruptcy Court, amend or modify the Plan in accordance with section 1127(b) of the Bankruptcy Code. Notwithstanding the foregoing, the Reorganized Debtors may remedy any defect or omission or reconcile any inconsistency in the Plan in such a manner as may be necessary or appropriate to carry out the purpose and intent of the Plan, without further notice to or order of the Bankruptcy Court. A holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such holder.

### **3. Withdrawal or Revocation of Plan**

Subject to the requirements of 11 U.S.C. § § 1127 and 1129, the Plan Proponents reserve the right to revoke or withdraw the Plan prior to the Effective Date and/or to file a subsequent Chapter 11 Plan.

### **4. Failure of Confirmation Date**

In the event the Confirmation Date does not occur, nothing in the Plan, shall be binding on the Debtors, the Estates, or any other Person or Entity, or otherwise be of any force or effect.

### **5. Notices**

Any notice, direction or other communication given regarding the matters contemplated by the Plan (each, a “**Notice**”) must be in writing, sent by personal delivery, electronic mail, courier or facsimile and addressed as follows:

Activa Resources, LLC  
Tiva Resources, LLC  
403 E Commerce St., Suite 220  
San Antonio, TX 78205

with copies to:

Loeb & Loeb LLP  
10100 Santa Monica Blvd., Ste. 2200  
Los Angeles, CA 90067  
Telephone: (310) 282-2000  
Fax: (310) 734-1686  
E-Mail: bgiven@loeb.com  
Attention: Bernard R. Given II, Esq.

A Notice is deemed to be given and received: (a) if sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (b) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile, or (c) if sent by electronic mail, when the sender receives an email from the recipient acknowledging receipt,



provided that an automatic “read receipt” does not constitute acknowledgment of an email for purposes of this section. Any party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any element of a party’s address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a party’s legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a party.

## **6. Plan Controls**

Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement, the Plan Supplement, or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control.

## **X. CONFIRMATION REQUIREMENTS**

“Confirmation” is a term commonly used to represent the Bankruptcy Court’s approval of a proposed plan. Many requirements must be met before the Bankruptcy Court can confirm the Plan, only some of which are addressed in this Disclosure Statement. The following is not a comprehensive explanation of law on this topic and cannot be relied upon as such. The Debtors suggests that interested parties should consult their own legal counsel for answers to any questions they may have in this section of the Disclosure Statement.

### **A. Acceptance of Plan**

#### **1. Who is Entitled to Vote**

Only impaired Classes of Claims or Interests who receive anything under the Plan are entitled to vote on the Plan. As a general rule, impaired classes entitled to vote are those that include holders of Allowed Claims who will receive payment on account of their Claims, other than payment in full in accordance with their prepetition terms, under the Plan.

Unclassified Claims are not eligible to vote. Thus, under the Plan, holders of Allowed Administrative Expense Claims, Fee Claims, DIP Claims and Priority Tax Claims cannot vote on the Plan. Classes 1, 3, 4, 5, 6, 7, and 8 are impaired under the Plan because the holders of Allowed Claims in these Classes will receive distributions but have their rights altered under the terms of the Plan. holders of Allowed Claims in these Classes are entitled to vote on the Plan.

Pursuant to § 1126 of the Bankruptcy Code, an impaired Class of Claims will be deemed to have accepted the Plan upon a favorable vote of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of the Class members voting on the Plan. Further, unless there is unanimous acceptance of the Plan by an impaired Class, the Court must also determine that Class members will receive at least as much as they would if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. The Plan Proponents believe that the



Plan will meet all applicable confirmation requirements, and further believe that the Plan will gain approval by holders of Allowed Class 1, 3, 4, 5, 6, 7, and 8 Claims.

For more information, see the “Voting Procedures and Requirements” section of this Disclosure Statement.

#### **B. Non-Consensual (“Cramdown”) Confirmation**

The Plan may be confirmed even if it is not accepted by one or more of the impaired Classes, if the Court finds that the Plan does not discriminate unfairly against and is “fair and equitable” as to each dissenting Class. This provision is generally set forth in § 1129(b) of the Bankruptcy Code. In broad terms, that section requires a showing that the Claims in such Class either will receive the full value of the Claim or, if they receive less, no Class with junior liquidation priority will receive anything under the Plan. Section 1129(b) is a relatively flexible, yet very complex provision, and this summary is not intended to be a complete statement of the law as indicated above. You should consult your own legal counsel for a full understanding of your rights and the Plan Proponents’ powers under that section. Please take notice that the Plan Proponents intend to request confirmation of the Plan pursuant to the provisions of Bankruptcy Code § 1129(b) should any impaired Class vote against acceptance of the Plan.

#### **C. Objections to Confirmation**

Whether or not you are the holder of a Claim or Interest that is entitled to vote on the Plan, you may still qualify as a party in interest who may object to confirmation of the Plan. As set forth above, the deadline to file and serve objections to confirmation of the Plan will be set by further code of the Bankruptcy Court and notice will be provided as required by the Bankruptcy Court and the Bankruptcy Code.

#### **D. Feasibility**

In order for the Plan to be confirmed, § 1129(a)(11) of the Bankruptcy Code requires the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors, unless such liquidation or reorganization is proposed in the Plan. This requirement is commonly referred to as the “Feasibility Test.” For the Plan to satisfy the Feasibility Test, the Bankruptcy Court must find that it offers a reasonable probability for success. For purposes of determining that the Plan means the Feasibility Test, the Debtors have prepared Financial Projections, attached hereto as **Exhibit B**. The Financial Projections show that the Reorganized Debtors are reasonably likely to have sufficient cash flow to make the payments required under the Plan, to service the Reorganized Debtors’ obligations and to otherwise maintain costs as identified therein.

The Financial Projections have not been compiled, audited, or examined by independent accountants, or with a view toward compliance with the guidelines established by the American Institute of Certified Public Accountants or the rules and regulations of the SEC regarding financial projections, and none of the Debtors or their advisors make any representations or warranties regarding the accuracy of the projections or the ability to achieve forecasted results. Many of the

assumptions underlying the projections are subject to significant uncertainties that are beyond the control of the Debtors and/or the Reorganized Debtors including, but not limited to, the price of oil and gas products, the levels of production achieved at the OSR-Halliday Unit, the Pruitt Project and at the Debtors' other properties, the fact that the Debtors are not the operators of the OSR-Halliday Unit or the Pruitt Project, inflation, and other unanticipated operational, market and economic conditions. Some assumptions may not materialize, and unanticipated events and circumstances may affect the Reorganized Debtors' actual financial results. Projections are inherently subject to substantial and numerous uncertainties and to a wide variety of significant business, economic, and competitive risks, and the assumptions underlying the projections may be inaccurate in material respects. In addition, unanticipated events and circumstances occurring subsequent to the approval of this Disclosure Statement by the Bankruptcy Court may affect the actual financial results achieved. Such results may vary significantly from the forecasts and such variations may be material.

In deciding whether to vote to accept or reject the Plan, holders of Claims and Interests must make their own determinations as to the reasonableness of any assumptions underlying the Financial Projections and the reasonableness of the Financial Projections.

The Financial Projections and the significant assumptions upon which the Financial Projections are based are included in **Exhibit B** hereto. Based on this analysis, the Debtors believe the Plan provides a feasible means of reorganization and operation from which there is a reasonably probability that, subject to the risks disclosed herein, the Reorganized Debtors will be able to make the payments required to be made pursuant to the Plan, and believe that this reorganization will not be followed by another financial reorganization.

#### **E. Best Interests of Creditors**

Pursuant to Bankruptcy Code § 1129(a)(7), unless there is unanimous acceptance of the Plan by an impaired Class, the Plan Proponents must demonstrate, and the Bankruptcy Court must determine that with respect to such Class, that each holder of a Claim or Interest, as applicable, will receive property of a value, as of the Confirmation Date of the Plan, that is not less than the amount that such holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on the Confirmation Date of the Plan. This requirement is commonly referred to as the "Best Interests of Creditors Test."

The Debtors believe that liquidation under Chapter 7 would result in substantial diminution of the value of the Estates because, among other things, (i) the additional administrative expenses involved in the U.S. Trustee's appointment of a Chapter 7 trustee and attorneys, accountants, and other professionals to assist such trustee and attendant delay in evaluating the Debtors' assets and liabilities; (ii) the erosion of the value of the Debtors' assets in the context of an expedited liquidation required under Chapter 7; (iii) the loss of the value of the Debtors as a going concern, and in particular, the loss of the potential for realization of substantial value in developing the Pruitt Project and OSR-Halliday Unit; and (iv) additional claims that may be generated during the liquidation and from cessation of the Debtors' operations, some of which could give rise to claims entitled to priority.

Amounts that a holder of Allowed Claims and Interests in Impaired Classes would receive in a hypothetical Chapter 7 liquidation are discussed in the Liquidation Analysis of the Debtors, attached hereto as **Exhibit C**. The process, which was used to create the Liquidation Analysis was inherently subject to significant business, economic and competitive uncertainties, and contingencies beyond the control of the Debtors. Pursuant to the Plan, unsecured claims are expected to receive a 100% distribution.

The Liquidation Analysis is based on assumptions with regard to liquidation decisions that are subject to change. Actual results may vary materially from the estimates and projections set forth in the Liquidation Analysis if the Debtors were to be in a hypothetical Chapter 7 liquidation. The Liquidation Analysis was developed solely for purposes of the formulation of the Plan and to enable holders of Claims and Interests entitled to vote under the Plan to make an informed judgment about the Plan, and should not be used or relied upon for any other purpose. Events and circumstances subsequent to the date on which the Liquidation Analysis was prepared may be different from those assumed or, alternatively, may have been unanticipated, and thus the occurrence of these events may affect financial results in a materially adverse or materially beneficial manner.

The Debtors and the Reorganized Debtors are not obligated to update or otherwise revise the Liquidation Analysis to reflect events or circumstances existing or arising after the date the Liquidation Analysis is initially filed or to reflect the occurrence of unanticipated events unless ordered to do so by the Bankruptcy Court. Therefore, the Liquidation Analysis may not be relied upon as a guarantee or other assurance of actual future results. In deciding whether to vote to accept or reject the Plan, holders of Claims and Interests must make their own determinations as to the reasonableness of any assumptions underlying the Liquidation Analysis and the reasonableness of the Liquidation Analysis.

## **XI. RISK FACTORS**

Both the confirmation and consummation of the Plan are subject to a number of risks. Specifically, if certain standards set forth in the Bankruptcy Code are not met, the Bankruptcy Court will not confirm the Plan even if holders of Claims and Interests accept the Plan. Although the Debtors believe that the Plan meets all confirmation standards, there can be no assurance that the Bankruptcy Court will reach the same conclusion. In addition, the Plan will not be consummated if the conditions to the Confirmation Date under the Plan are not waived or satisfied. Further, the Debtors can provide no assurance that modifications of the Plan will not be required to obtain confirmation of the Plan, or that such modifications will not require additional solicitation of acceptances. Additionally, the Debtors reserve the right to revoke and withdraw the Plan prior to the commencement of the hearing to confirm the Plan. If the Plan Proponents revoke or withdraw the Plan, or if confirmation of the Plan does not occur, then the Plan shall be deemed null and void and nothing contained in it shall be deemed to constitute a waiver or release of any Claims by or against the Debtors or any other Person or Entity or to prejudice in any manner the rights of the Debtors or any Person or Entity in any further proceedings involving the Debtors. Further, the Plan reserves the right to bring Causes of Action, including objection to Claims, after the Effective Date. As such, the holder of a Claim may not know that its Claim will be objected

to until after the Effective Date and it is possible the Reorganized Debtors could incur costs depending on the extent of litigation undertaken.

In addition, distributions under the Plan are subject to the performance of the Reorganized Debtors' business and drilling of additional wells, most of which are not operated by the Debtors, utilizing the proceeds of the New Credit Facility, which is itself subject to certain performance metrics. Notwithstanding the Plan Proponents' good faith efforts to provide reasonable estimates of the expected returns to holders of Allowed Claims based on the best of their knowledge, information and belief as of the date of this Disclosure Statement, it is always possible that such distributions will be less than projected by the Plan. As noted above, the actual recoveries under the Plan will be dependent upon a variety of risk factors including, but not limited to the following:

- (i) Oil and gas exploration, development and production activities may not be successful and carry a risk of loss.
- (ii) Unconventional oil and gas resource plays carry additional risks and uncertainties.
- (iv) The Reorganized Debtors' success may be affected by changes in government rules and regulations.
- (v) The Reorganized Debtors may encounter operational problems and labor or equipment shortages.
- (vi) The prices for oil and gas productions are subject to fluctuation.
- (vii) The Reorganized Debtors will be dependent on a small management team. The loss of one of these managers may have a substantially adverse impact on operations.
- (viii) The Reorganized Debtors will be dependent on the operators of the OSR-Halliday Unit and the Pruitt Project to complete wells on the general timeline proposed by the Debtors in Section VI.B and **Exhibit B** hereto.

## **XII. TAX CONSEQUENCES**

The following is a summary of certain United States federal income tax consequences ("**Tax Consequences**") of the Plan. This description is for informational purposes only and, owing to many factors, including a lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various Tax Consequences of the Plan discussed below. Additional uncertainties exist because the Tax Consequences may differ based on the facts and circumstances of each Person. This disclosure only provides a basic discussion of the principal Tax Consequences of the Plan to the Debtors and to holders of Claims and Interests. No opinion of counsel has been sought or obtained with respect to any Tax Consequences of the Plan. No rulings or determinations of the IRS or any other tax authorities have been sought or obtained with respect to any Tax Consequences of the Plan, and the discussion below is not binding on the IRS or other authorities. No representations are being made to the Debtors or any holder of a Claim or Interest regarding the particular Tax Consequences of the confirmation and consummation of the

Plan. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position from any discussed here.

The following discussion of the Tax Consequences is based on the Internal Revenue Code of 1986, as amended, (the “**Code**”) Treasury Regulations, judicial authorities, published positions of the IRS and other applicable authorities, all as in effect on the date of this document and all of which are subject to change or differing interpretations (possibly with retroactive effect).

The following discussion does not address foreign, state, or local tax consequences of the Plan, nor does it purport to address the Tax Consequences of the Plan to special classes of taxpayers (e.g., banks and certain other financial institutions, insurance companies, tax-exempt organizations, governmental entities, persons that are, or hold their Claims through, pass-through entities, persons whose functional currency is not the United States dollar, foreign persons, dealers in securities or foreign currency, employees of the Debtors, persons who received their Claims by exercising an employee stock option or otherwise as compensation, and persons holding Claims that are a hedge against, or that are hedged against, currency risk or that are part of a straddle, constructive sale, or conversion transaction). Furthermore, the following discussion does not address United States federal taxes other than income taxes.

**Holders of Claims and Equity Interests are strongly urged to consult their own tax advisor regarding the United States federal, state, local, and foreign tax consequences of the transactions described in this Disclosure Statement and in the Plan.**

#### **A. Consequences to the Debtors**

In general, the Internal Revenue Code requires that a debtor in a bankruptcy case reduce certain of its tax attributes, such as net operating loss (“**NOL**”) carry-forwards and current year NOLs, tax credits and tax basis in assets, by the amount of any cancellation of debt (“**COD**”). The amount of COD, in general, is the excess of (i) the adjusted issue price of the indebtedness satisfied over (ii) the sum of the issue price of any new indebtedness of the taxpayer issued, the amount of cash paid and the fair market value of any new consideration (including stock of the debtor) given in satisfaction of such indebtedness at the time of the exchange. Based on the facts and circumstances of the Chapter 11 Cases, the Debtors express no view as to whether the Debtors will incur a net gain or net loss for federal income tax purposes, and if a net gain, whether a material net tax liability will result. The intent of the Plan is to have the Debtors’ current NOLs, loss carry-forwards, and/or other tax attributes survive throughout the life of the Plan. The Debtors’ NOLs, loss carry-forwards, and/or other tax attributes will be retained by the Reorganized Debtors. Nevertheless, parties in interest are cautioned against assuming the Debtors’ NOLs or loss carry-forwards will be available to shelter any income or gain that may be recognized as a result of implementation of the Plan. To the extent that any federal income tax liability to the Debtors results under the Plan, the Reorganized Debtors will pay the resulting tax.

#### **B. Consequence to holders of Claims**

Generally, a holder of a Claim (“**holder**”) should in most circumstances, recognize a gain or loss equal to the difference between the “amount realized” by such holder in exchange for its

Claim and such holder's adjusted tax basis in the Claim. The "amount realized" is equal to the sum of the cash and the fair market value of any other consideration received under a plan of reorganization in respect of a holder's Claim. The tax basis of a holder in a Claim will generally be equal to the holder's cost therefore. The actual federal income tax consequences of the Plan to any given holder of a Claim, however, will depend upon several factors, including but not limited to: (i) the origin of the holder's Claim, (ii) whether the holder is a resident of the United States for tax purposes (or falls into any special class of taxpayer), (iii) whether the holder reports income on an accrual or cash basis method, (iv) whether the holder has taken a bad debt deduction or worthless security deduction with respect to this Claim and (v) whether the holder receives distributions under the Plan in more than one taxable year. **HOLDERS ARE STRONGLY ADVISED TO CONSULT THEIR OWN TAX ADVISORS WITH RESPECT TO THE TAX TREATMENT UNDER THE PLAN OF THEIR PARTICULAR CLAIMS.**

### **C. Withholding**

All distributions to holders of Allowed Claims and Interests under the Plan are subject to any applicable withholding required by law, which will be made by the Reorganized Debtors. In addition, as set forth in the Plan, Claim and Interest holders may be required to provide general tax information to the Debtors and/or Reorganized Debtors, as the case may be, in order to receive distributions pursuant to the Plan.

### **D. Importance of Obtaining Professional Tax Assistance**

**The foregoing discussion is intended only as a very basic summary of certain United States federal income tax consequences of the Plan and is not a substitute for careful tax planning with a tax professional. The above discussion is for informational purposes only and is not tax advice. The tax consequences are in many cases uncertain and may vary depending on the particular circumstances of the holder of any Claim or Equity Interest. Accordingly, Creditors and Equity Interest holders are strongly urged to consult their tax advisors about the United States federal, state and local and applicable foreign income and other Tax Consequences of the Plan, including without limitation with respect to tax reporting and record keeping requirements.**

**IRS Circular 230 Notice: To comply with U.S. treasury regulations, be advised that any U.S. federal tax advice included in this communication (and it is not intended that any such advice be given in this Disclosure Statement) is not intended or written to be used, and cannot be used, to avoid any U.S. federal tax penalties or to promote, market, or recommend to another party any transaction or matter.**

## **XIII. FURTHER ACCESS TO INFORMATION IN THE BANKRUPTCY CASE**

Additional sources of information available to the public include the various Schedules, pleadings and reports that were filed by the Debtors or other parties in interest in the Chapter 11 Cases. Such filings can be accessed electronically through the website maintained by the Debtors' Claims and Noticing Agent at <https://www.donlinrecano.com/Clients/arl/Index>.

## **XIV. RECOMMENDATION AND CONCLUSION**

The Plan Proponents believe that confirmation of the Plan is in the best interests of the Estates and its creditors and in particular, believe that recoveries to holders of Allowed Claims will be maximized under the circumstances by confirmation of the Plan.

Dated: November 16, 2022

ACTIVA RESOURCES, LLC AND TIVA  
RESOURCES, LLC

By: /s John Hayes  
John Hayes  
Debtors and Plan Proponents

LOEB & LOEB LLP

By: /s/Bernard R. Given II  
Bernard R. Given II  
Attorneys for Debtors



**TABLE OF EXHIBITS**

<b>Exhibit A</b>	Debtors' Plan of Reorganization
<b>Exhibit B</b>	Financial Projections
<b>Exhibit C</b>	Liquidation Analysis
<b>Exhibit D</b>	New Credit Facility Term Sheet

# **Exhibit A**

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

In re:

Activa Resources, LLC and  
Tiva Resources, LLC,

Debtors.

§  
§  
§ Case No. 22-50117  
§ Case No. 22-50118  
§  
§ Chapter 11  
§  
§ (Jointly Administered under  
§ Case No. 22-50117)

**DEBTORS' THIRD AMENDED  
JOINT PLAN OF REORGANIZATION**

**LOEB & LOEB LLP**

Bernard R. Given II  
State Bar No. 07990180  
10100 Santa Monica Blvd., Suite 2200  
Los Angeles, CA 90067-4120  
Telephone: 310-282-2000  
Facsimile: 310-282-2200  
Email: [bgiven@loeb.com](mailto:bgiven@loeb.com)

-and-

Bethany D. Simmons (admitted *pro hac vice*)  
345 Park Avenue  
New York, NY 10154  
Telephone: 212-407-4000  
Facsimile: 212-407-4990  
Email: [bsimmons@loeb.com](mailto:bsimmons@loeb.com)

*Counsel for Debtors  
and Debtors in Possession*

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND SUMMARY .....	1
I. DEFINITIONS AND RULES OF INTERPRETATION .....	1
1.1 Definitions.....	1
1.2 Rules of Interpretation .....	1
1.3 Computation of Time.....	2
II. ADMINISTRATIVE, DIP AND PRIORITY TAX CLAIMS .....	2
2.1 Administrative Claims .....	2
2.2 Bar Date for Administrative Claims .....	2
2.3 Fee Claims .....	2
2.4 DIP Claims.....	3
2.5 Priority Tax Claims.....	3
III. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS .....	3
3.1 General Rules of Classification .....	3
3.2 Classified Claims and Interests.....	4
3.3 Class 1: Priority Non-Tax Claims.....	4
3.3.1 Classification.....	4
3.3.2 Treatment .....	4
3.4 Class 2: Secured Priority Tax Claims .....	5
3.4.1 Classification.....	5
3.4.2 Treatment .....	5
3.5 Class 3: Allowed Secured Texas Capital Bank Claim.....	5
3.5.1 Classification.....	6
3.5.2 Treatment .....	6
3.6 Class 4: Allowed Secured Cargill Claim .....	7
3.6.1 Classification.....	7
3.6.2 Treatment .....	7
3.7 Class 5: Allowed Other Secured Claims.....	9
3.7.1 Classification.....	9
3.7.2 Treatment .....	9
3.8 Class 6: Allowed Operator Claims .....	10
3.8.1 Classification.....	10

## TABLE OF CONTENTS CONTINUED

	<u>Page</u>
3.8.2 Treatment .....	10
3.9 Class 7: General Unsecured Claims.....	10
3.9.1 Classification.....	10
3.9.2 Treatment .....	10
3.10 Class 8: Suspense Claims.....	11
3.10.1 Classification.....	11
3.10.2 Treatment .....	11
3.11 Class 9: Intercompany Claims .....	11
3.11.1 Classification.....	11
3.11.2 Treatment .....	11
3.12 Class 10: Activa Class A Interests and Tiva Interests .....	11
3.12.1 Classification.....	11
3.12.2 Treatment .....	11
3.13 Class 11: Activa Class B Interests .....	12
3.13.1 Classification.....	12
3.13.2 Treatment .....	12
3.14 Vacant Classes .....	12
3.15 Insurance.....	12
3.16 Special Provision Governing Unimpaired Claims .....	12
IV. MEANS FOR IMPLEMENTATION .....	12
4.1 Survival of Activa and Tiva.....	12
4.2 Vesting of Assets .....	12
4.3 Exit Financing: New Credit Facility .....	13
4.4 Performance Requirements.....	14
4.4.1 Debt Coverage Ratio Milestones .....	14
4.4.2 Exit Facility Milestones .....	15
4.4.3 General and Administrative Expenses .....	15
4.4.4 Hedges.....	15
4.5 Post-Confirmation Sale.....	16
4.6 Preservation of Causes of Action.....	17
4.6.1 Maintenance of Causes of Action .....	17
4.6.2 Preservation of All Causes of Action Not Expressly Settled or Released .....	17

## TABLE OF CONTENTS CONTINUED

	<u>Page</u>
4.7 Amendment of Company Agreements.....	17
4.8 Managers and Officers.....	17
4.9 Company Authorization.....	17
4.10 Effectuating Documents and Further Transactions.....	18
4.11 Authority to Object to and Settle Disputed Claims .....	18
4.12 Provisions to invoke cramdown proceedings, if necessary .....	18
V. EXECUTORY CONTRACTS AND LEASES .....	18
5.1 Assumption of Executory Contracts and Unexpired Leases.....	18
5.2 Cure of Defaults; Assignment of Executory Contracts and Unexpired Leases.....	19
5.3 Rejection of Executory Contracts and Unexpired Leases.....	20
5.4 Claims on Account of the Rejection of Executory Contracts and Unexpired Leases.....	21
5.5 Extension of Time to Assume or Reject .....	21
5.6 Surety Bond Obligations.....	21
5.7 Treatment of Certain Insurance Policies.....	22
VI. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS .....	22
6.1 Resolution of Disputed Claims .....	22
6.1.1 Allowance of Claims.....	22
6.1.2 Prosecution of Objections to Claims.....	22
6.1.3 Claims Estimation.....	22
6.1.4 Deadline to File Objections to Claims.....	23
6.2 No Distributions Pending Allowance .....	23
6.3 Distributions on Account of Disputed Claims Once They Are Allowed.....	23
6.4 Disputed Claims Reserve.....	23
VII. PROVISIONS GOVERNING DISTRIBUTIONS .....	23
7.1 Distributions for Claims Allowed as of the Effective Date .....	23
7.2 No Post-Petition Interest on Claims.....	24
7.3 Delivery and Distributions; Undeliverable or Unclaimed Distributions .....	24
7.3.1 Delivery of Distributions in General.....	24
7.3.2 Minimum Distributions.....	24
7.3.3 Undeliverable Distributions .....	24
7.4 Compliance with Tax Requirements.....	25
VIII. CONDITIONS PRECEDENT .....	25
8.1 Conditions to Confirmation .....	25
8.2 Conditions to the Effective Date.....	25

## TABLE OF CONTENTS CONTINUED

	<u>Page</u>
8.3 Effect of Non-Occurrence of the Conditions to the Effective Date.....	25
IX. DISCHARGE, INJUNCTION AND RELATED PROVISIONS .....	26
9.1 Discharge of Claims.....	26
9.2 Exculpation .....	26
9.3 Injunction .....	27
9.4 Binding Nature of Plan .....	28
9.5 Protection Against Discriminatory Treatment .....	28
X. RETENTION OF JURISDICTION .....	28
10.1 Jurisdiction.....	28
XI. MISCELLANEOUS PROVISIONS.....	30
11.1 Payment of Statutory Fees .....	30
11.2 Modification of Plan .....	30
11.3 Revocation or Withdrawal of Plan.....	30
11.4 Service of Documents .....	30
11.5 Exemption from Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code .....	31
11.6 Votes Solicited in Good Faith.....	31
11.7 Closing of Chapter 11 Cases.....	32
11.8 Conflicts.....	32
11.9 Substantial Consummation .....	32
EXHIBIT “A” - DEFINITION .....	i



## INTRODUCTION AND SUMMARY

Activa Resources, LLC and Tiva Resources, LLC, the debtors and debtors-in-possession in the above-captioned cases (the “**Debtors**” or “**Plan Proponents**”) propose this Debtors’ Third Amended Joint Plan of Reorganization (as it may be amended, modified or supplemented from time to time, together with all exhibits annexed hereto or referenced herein, the “**Plan**”) for the resolution and satisfaction of all Claims against and interests in the Debtors. All capitalized terms not defined in this introduction have the meanings ascribed to them in Article I of this Plan. Reference is made to the Disclosure Statement for a discussion of the Debtors’ history, business, resolution of material disputes, financial projections demonstrating the Debtors’ ability to make the payments required by this Plan and a summary and analysis of the Plan and certain related matters. All parties entitled to vote on the Plan should review the Disclosure Statement and the terms of the Plan before voting to accept or reject the Plan. In addition, there may be other agreements and documents that may be filed as part of the Plan, including the Plan Supplement. No solicitation materials, other than the Disclosure Statement and related materials transmitted herewith and approved by the Bankruptcy Court, have been authorized by the Bankruptcy Court for use in soliciting acceptances or rejections of the Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Federal Bankruptcy Rule 3019, the Plan Proponents expressly reserve the right to alter, amend, modify, revoke, or withdraw this Plan prior to its Confirmation.

### I.

#### DEFINITIONS AND RULES OF INTERPRETATION

**1.1 Definitions.** Capitalized terms used herein shall have the meanings set forth in **Exhibit A**.

**1.2 Rules of Interpretation.** For purposes of the Plan: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (b) pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter genders; (c) any reference in the Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (d) any reference in the Plan to an existing document or an exhibit filed or to be filed means such document or exhibit, as it may have been or may be amended, modified or supplemented; (e) unless otherwise specified, all references in the Plan to articles, sections, clauses and exhibits are references to articles, sections, clauses and exhibits of or to the Plan; (f) the words “herein” and “hereto,” and other words of similar import, refer to this Plan in its entirety rather than to a particular portion of the Plan; (g) captions and headings to articles and sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (h) any reference to an Entity or Person as a holder of a Claim or Interest includes that Person’s successors, assigns and Affiliates; (i) the rules of construction set forth in Bankruptcy Code section 102 shall apply to the extent such rules are not inconsistent with any other provision in this section; (j) any term used herein that is not defined herein shall have the meaning ascribed thereto in the Bankruptcy Code and/or the Bankruptcy Rules, if used therein; and (k) in the event of any ambiguity or conflict between the Plan and the Disclosure Statement, the provisions of the Plan shall govern.

1.3 **Computation of Time.** In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

## II. ADMINISTRATIVE, DIP AND PRIORITY TAX CLAIMS

2.1 **Administrative Claims.** Except as otherwise provided in this Article II, the legal, equitable and contractual rights of the holders of Allowed Administrative Claims are unaltered by this Plan. Subject to the other terms and conditions of this Article II, on the later of the Effective Date or the date on which an Administrative Claim becomes an Allowed Administrative Claim, or, in each such case, as soon as practicable thereafter, each holder of an Allowed Administrative Claim (other than an Allowed Fee Claim) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim either (i) Cash equal to the amount of such Allowed Administrative Claim; or (ii) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the holder of such Allowed Administrative Claim shall have agreed upon in writing; *provided, however*, that Administrative Claims incurred by Debtors or Reorganized Debtors in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court.

2.2 **Bar Date for Administrative Claims.** Except as otherwise provided in section 503(b)(1)(D) of the Bankruptcy Code, unless previously filed or paid, requests for payment of Administrative Claims must be filed and served on the Reorganized Debtors, pursuant to the procedures specified in the Confirmation Order by no later than the Administrative Claims Bar Date. 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, the Reorganized Debtors, the Reorganized Debtors' Assets, and the Estates, and such Administrative Claims shall be deemed discharged as of the Effective Date. All such Administrative Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Section 9.3 hereof.

Objections to such payment requests must be filed and served on the Reorganized Debtors and the requesting party by the later of (a) sixty (60) days after the Administrative Claims Bar Date and (b) sixty (60) days after the filing of the applicable request for payment of Administrative Claims, if applicable, as the same may be modified or extended from time to time by Final Order of the Bankruptcy Court.

2.3 **Fee Claims.** Professionals or other Entities asserting a Fee Claim for services rendered before the Effective Date must file and serve on the Reorganized Debtors and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court an application for final allowance of such Fee Claim no later than the Fee Claims Bar Date; provided that the Reorganized Debtors shall pay Professionals retained by the Debtors or Reorganized Debtors, in the ordinary course of business for any work performed after the Effective Date, including those reasonable and documented fees and expenses incurred by such Professionals in connection with the implementation and

consummation of this Plan, in each case without further application or notice to or order of the Bankruptcy Court.

Objections to any Fee Claim must be filed and served on the Reorganized Debtors and the requesting party by no later than twenty-one (21) days after the filing of the applicable final request for payment of the Fee Claim.

Each holder of an Allowed Fee Claim shall be (i) paid in full in Cash within ten (10) Business Days after entry of the order approving such Allowed Fee Claim or (ii) will receive such other less favorable treatment as to which Reorganized Debtors and the holder of such Allowed Fee Claim shall have agreed upon in writing.

**2.4 DIP Claims.** The DIP Claims shall survive the Effective Date and shall not be released or discharged pursuant to this Plan or the Confirmation Order, notwithstanding any provision thereof to the contrary. The DIP Claims shall become part of the New Credit Facility and will be paid in accordance with the terms of the New Credit Facility Documents.

**2.5 Priority Tax Claims.** The legal, equitable and contractual rights of the holders of Allowed Priority Tax Claims are unaltered by this Plan. On, or as soon as reasonably practicable after, the later of (i) ninety (90) days following the Effective Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each holder of an Allowed Priority Tax Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Reorganized Debtors: (A) Cash equal to the amount of such Allowed Priority Tax Claim (to the extent there is sufficient Available Cash to make such payment); (B) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the holder of such Allowed Priority Tax Claim shall have agreed upon in writing; or (C) pursuant to and in accordance with sections 1129(a)(9)(C) and 1129(a)(9)(D) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Priority Tax Claim payable in regular installment payments over a period ending not more than five (5) years after the Petition Date, plus simple interest at the rate required by applicable non-bankruptcy law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to in writing by a particular taxing authority and the Debtors or Reorganized Debtors, as applicable; provided, however, that Priority Tax Claims incurred by Debtors or Reorganized Debtors in the ordinary course of business may be paid in the ordinary course of business by Reorganized Debtors in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. Any installment payments to be made under clause (C) above shall be made in equal quarterly payments beginning on the last Business Day of the month following the end of each calendar quarter after the Effective Date, and continuing thereafter until payment in full of the applicable Allowed Priority Tax Claim.

### III.

#### CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

**3.1 General Rules of Classification.** A Claim or interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and

such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date. A Claim may be bifurcated and classified in other Classes to the extent that any portion of the Claim falls within the description of such other Classes. A holder of a Claim or Interest is entitled to vote to accept or reject the Plan, consistent with the Voting Rights set forth below, to the extent they hold such Claim or Interest on the Voting Record Date.

3.2 **Classified Claims and Interests.** The Claims against and interests in the Debtors have been classified as follows:

<b><u>Class</u></b>	<b><u>Claim</u></b>	<b><u>Status</u></b>	<b><u>Voting Rights</u></b>
Class 1	Allowed Priority Non-Tax Claims	Impaired	Entitled to Vote
Class 2	Allowed Secured Priority Tax Claims	Unimpaired	Not Entitled to Vote
Class 3	Allowed Secured Texas Capital Bank Claim	Impaired	Entitled to Vote
Class 4	Allowed Secured Cargill Claim	Impaired	Entitled to Vote
Class 5	Allowed Other Secured Claims	Impaired	Entitled to Vote
Class 6	Allowed Operator Claims	Impaired	Entitled to Vote
Class 7	Allowed General Unsecured Claims	Impaired	Entitled to Vote
Class 8	Allowed Suspense Claims	Impaired	Entitled to Vote
Class 9	Intercompany Claims	Unimpaired	Not Entitled to Vote
Class 10	Class A Interests	Unimpaired	Not Entitled to Vote
Class 11	Activa Class B Interests	Impaired	Not Entitled to Vote

3.3 **Class 1: Priority Non-Tax Claims.**

3.3.1 **Classification.** Class 1 consists of all Allowed Priority Non-Tax Claims. Class 1 is Impaired by the Plan and the holders of Allowed Priority Non-Tax Claims are deemed entitled to vote on the Plan.

3.3.2 **Treatment.** On, or as soon as reasonably practicable after, the later of (i) sixty (60) days following the Effective Date if such Priority Non-Tax Claim is an Allowed Priority Non-Tax Claim as of that date or (ii) sixty (60) days following the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, each holder of an Allowed Priority Non-Tax Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Non-Tax Claim, at the election of the Reorganized Debtors: (A) Cash equal to the amount of such Allowed Priority Non-Tax Claim, payable without interest in quarterly installments over a three-year period; (B) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the

holder of such Allowed Priority Non-Tax Claim shall have agreed upon in writing; or (C) such other treatment such that it will not be Impaired pursuant to section 1124 of the Bankruptcy Code; *provided, however*, that Class 1 Claims incurred by Debtors or Reorganized Debtors in the ordinary course of business may be paid in the ordinary course of business by Debtors or Reorganized Debtors, as applicable, in accordance with the terms and conditions of any agreements relating thereto without further notice to or order of the Bankruptcy Court. Any installment payments to be made under clause (A) above shall be made in equal quarterly Cash payments beginning on or about December 31, 2022, and continuing quarterly thereafter until payment in full of the applicable Allowed Secured Priority Non-Tax Claim. Notwithstanding the foregoing, if a Sale Trigger occurs, any holder of an Allowed Priority Non-Tax Claim that has not yet been paid in full shall instead receive payment from the proceeds of the Post-Confirmation Sale consistent with section 4.5 below.

### 3.4 **Class 2: Secured Priority Tax Claims.**

3.4.1 **Classification.** Class 2 consists of the Allowed Secured Priority Tax Claims. Class 2 is Unimpaired by the Plan and the holders of Allowed Secured Priority Tax Claims are deemed to accept the Plan and, therefore, are not entitled to vote on the Plan.

3.4.2 **Treatment.** On, or as soon as reasonably practicable after, the later of (i) sixty (60) days following the Effective Date, if such Secured Priority Tax Claim is an Allowed Secured Priority Tax Claim as of that date, or (ii) as soon as is reasonably practicable after the date such Secured Priority Tax Claim becomes an Allowed Secured Priority Tax Claim, each holder of an Allowed Secured Priority Tax Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Secured Priority Tax Claim, at the election of the Reorganized Debtors: (A) Cash equal to the amount of such Allowed Secured Priority Tax Claim; (B) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the holder of such Allowed Secured Priority Tax Claim shall have agreed upon in writing; (C) the Collateral securing such Allowed Secured Priority Tax Claim; (D) such other treatment such that it will not be Impaired pursuant to section 1124 of the Bankruptcy Code; or (E) pursuant to and in accordance with sections 1129(a)(9)(C) and 1129(a)(9)(D) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Secured Priority Tax Claim payable in regular equal installment payments over a period ending not more than five (5) years after the Petition Date, plus simple interest at the rate required by applicable non-bankruptcy law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to in writing by a particular taxing authority and the Reorganized Debtor. Any installment payments to be made under clause (E) above shall be made in equal quarterly Cash payments beginning on December 31, 2022, and continuing quarterly thereafter until payment in full of the applicable Allowed Secured Priority Tax Claim. Notwithstanding the foregoing, if a Sale Trigger occurs, any holder of an Allowed Secured Priority Tax Claim that has not yet been paid in full shall instead receive payment from the proceeds of the Post-Confirmation Sale consistent with section 4.5 below.

### 3.5 **Class 3: Allowed Secured Texas Capital Bank Claim.**



3.5.1 **Classification.** Class 3 consists of the Allowed Secured Texas Capital Bank Claim. Class 3 is Impaired by the Plan and the holder of the Allowed Secured Texas Capital Bank Claim is entitled to vote on the Plan.

3.5.2 **Treatment.**

(a) Texas Capital Bank shall have a final, Allowed Claim of \$10,765,636.13, subject to inclusion of additional interest from September 30, 2022 through the Confirmation Date (the “**Allowed Secured Texas Capital Bank Claim**”). Texas Capital Bank’s claim(s) for post-petition attorneys’ fees will be the subject of a claim or application per 11 U.S.C. §506(b) or other applicable Bankruptcy Code section, with all parties’ rights reserved as to such claim or application. Post-petition attorney’s fees allowed by the Bankruptcy Court shall be added to the Allowed Secured Texas Capital Bank Claim and payable in accordance with this section 3.5.2.

(b) The holder of the Allowed Secured Texas Capital Bank Claim shall be paid (1) interest only for the first twelve months following the Effective Date based on a six year amortization schedule, (2) principal and interest during the thirteenth to forty-first months following the Effective Date based on a six year amortization schedule, and (3) a balloon payment during the forty-second month following the Effective Date. The Allowed Secured Texas Capital Bank Claim shall accrue interest at the Prime Rate plus 2.5% per annum from the Effective Date through the thirty-sixth month and at the Prime Rate plus 5% per annum from the thirty-seventh month through the forty-second month following the Effective Date. The Prime Rate shall be adjusted on the first business day of each month. Each installment shall be due on the first Business Day of the month beginning in the first full month following the Effective Date.

(c) Payment of the Allowed Secured Texas Capital Bank Claim shall be secured by the Texas Capital Bank Collateral pursuant to the terms of the New TCB Credit Documents. The New TCB Credit Documents shall reflect that Texas Capital Bank and Cargill shall retain all pre-existing liens which are fully perfected and first-priority (except for undeveloped acreage on the OSR-Halliday Unit upon which the proposed New Credit Facility Lender will be granted priming liens) and shall be granted blanket liens on all of the Reorganized Debtors’ Assets, including second liens on the Pruitt Project’s acreage and wells, which liens shall be subordinate to the New Credit Facility Lender, unless and until those prior liens are satisfied. On the Effective Date, the Reorganized Debtors shall be authorized to enter into and execute the New TCB Credit Documents substantially in the form contained in the Plan Supplement, and any related agreements or filing without the need for any further corporate or organizational action and without further action by or approval of the Bankruptcy Court.

(d) Until the Allowed Secured Texas Capital Bank Claim is repaid in full pursuant to paragraph (a) above, the Reorganized Debtors shall provide the following reporting to Texas Capital Bank:

(1) during the term of the Plan, within 30 days after the quarters ending March 31, June 30, September 30 and December 31, the Reorganized

Debtors shall transmit to Texas Capital Bank (a) statements of assets and liabilities for the most recently ended quarter, (b) financial statements for the most recently ended quarter, and (c) financial projections for the upcoming quarter;

(2) within 45 days of June 30 and December 31 of each year during the term of the Plan, the Reorganized Debtors shall transmit to Texas Capital Bank an engineering reserve report of the Reorganized Debtors' oil and gas producing properties, and the reserve reports issued as of December 31 of each year during the term of the Plan shall thereafter be audited by a third party and a copy provided to Texas Capital Bank; and

(3) any reporting that the Reorganized Debtors are required to provide to the New Credit Facility Lender under the New Credit Facility Documents.

(e) Beginning twelve months after the Effective Date, if the Reorganized Debtors' Quarterly Net Cash Balance exceeds \$2 million, the Reorganized Debtors shall make an additional *pro rata* principal payment to Texas Capital Bank and Cargill in the amount by which the Reorganized Debtors' Quarterly Net Cash Balance exceeds \$2 million. The Reorganized Debtors shall make such payment within sixty (60) days following the end of any quarter in which the reporting reflects a Quarterly Net Cash Balance of greater than \$2 million.

(f) Except with the written consent of each of Texas Capital Bank, Cargill and the New Credit Facility Lender, until the Allowed Secured Cargill Claim and Allowed Secured Texas Capital Bank Claim is repaid in full, the Reorganized Debtors shall not obtain additional secured debt outside the ordinary course of business; provided, however, that the Reorganized Debtors are expressly permitted to enter into and to obtain (1) the New Credit Facility from the New Credit Facility Lender pursuant to the terms of the New Credit Facility Documents, (2) financing for normal course purchases through lease financing or other similar arrangements, and (3) replacement financing to make the final payments to Texas Capital Bank and Cargill during no later than the forty-second (42) month following the Effective Date.

(g) Notwithstanding the treatment of the Allowed Secured Texas Capital Bank Claim set forth in paragraph (b) above, if a Sale Trigger occurs, the holder of the Allowed Secured Texas Capital Bank Claim shall instead receive payment from the proceeds of the Post-Confirmation Sale consistent with section 4.5 below.

### 3.6 **Class 4: Allowed Secured Cargill Claim.**

3.6.1 **Classification.** Class 4 shall consist of the holder of the Allowed Secured Cargill Claim. Class 4 is Impaired by the Plan and the holder of the Allowed Secured Cargill Claim is entitled to vote on the Plan.

#### 3.6.2 **Treatment.**



(a) Cargill shall have a final, Allowed Claim of \$1,170,487.02. Cargill's claim(s) for post-petition attorneys' fees will be the subject of a claim or application per 11 U.S.C. §506(b) or other applicable Bankruptcy Code section, with all parties' rights reserved as to such claim or application. Post-petition attorney's fees allowed by the Bankruptcy Court shall be added to the Allowed Secured Cargill Claim and payable in accordance with section 3.6.2 of the Plan.

(b) The holder of the Allowed Secured Cargill Claim shall be paid (1) interest only for the first twelve months following the Effective Date based on a six year amortization schedule, (2) principal and interest during the thirteenth to forty-first months following the Effective Date based on a six year amortization schedule, and (3) a balloon payment during the forty-second month following the Effective Date. The Allowed Secured Cargill Claim shall accrue interest at the Prime Rate plus 2.5% per annum from the Effective Date through the thirty-sixth month and at the Prime Rate plus 5% per annum from the thirty-seventh month through the forty-second month following the Effective Date. The Prime Rate shall be adjusted on the first business day of each month. Each installment shall be due on the fifth day of the month (or the next immediately following Business Day if the fifth day is not a business day) beginning in the first full month following the Effective Date.

(c) Payment of the Allowed Secured Cargill Claim shall be secured by the Cargill Collateral pursuant to the terms of the New TCB Credit Documents. The New TCB Credit Documents shall reflect that Texas Capital Bank and Cargill shall retain all pre-existing liens which are fully perfected and first-priority (except for undeveloped acreage on the OSR-Halliday Unit upon which the proposed New Credit Facility Lender will be granted priming liens) and shall be granted blanket liens on all of the Reorganized Debtors' Assets, including second liens on the Pruitt Project's acreage and wells, which liens shall be subordinate to the New Credit Facility Lender, unless and until those prior liens are satisfied. On the Effective Date, the Reorganized Debtors shall be authorized to enter into and execute the New TCB Credit Documents substantially in the form contained in the Plan Supplement, and any related agreements or filing without the need for any further corporate or organizational action and without further action by or approval of the Bankruptcy Court.

(d) Until the Allowed Secured Cargill Claim is repaid in full pursuant to paragraph (b) above, the Reorganized Debtors shall provide the following reporting to Cargill:

(1) during the term of the Plan, within 30 days after the quarters ending March 31, June 30, September 30 and December 31, the Reorganized Debtors shall transmit to Cargill (a) statements of assets and liabilities for the most recently ended quarter, (b) financial statements for the most recently ended quarter, and (c) financial projections for the upcoming quarter;

(2) within 45 days of June 30 and December 31 of each year during the term of the Plan, the Reorganized Debtors shall transmit to Cargill an

engineering reserve report of the Reorganized Debtors' oil and gas producing properties, and the reserve reports issued as of December 31 of each year during the term of the Plan shall thereafter be audited by a third party and a copy provided to Cargill; and

(3) any reporting that the Reorganized Debtors are required to provide to the New Credit Facility Lender under the New Credit Facility Documents.

(e) Beginning twelve months after the Effective Date, if the Reorganized Debtors' Quarterly Net Cash Balance exceeds \$2 million, the Reorganized Debtors shall make an additional *pro rata* principal payment to Texas Capital Bank and Cargill in the amount by which the Reorganized Debtors' Quarterly Net Cash Balance exceeds \$2 million. The Reorganized Debtors shall make such payment within sixty (60) days following the end of any quarter in which the reporting transmitted in paragraph (d)(1) reflects a Quarterly Net Cash Balance of greater than \$2 million.

(f) Except with the written consent of each of Texas Capital Bank, Cargill and the New Credit Facility Lender, until the Allowed Secured Cargill Claim and Allowed Secured Texas Capital Bank Claim is repaid in full, the Reorganized Debtors shall not obtain additional secured debt outside the ordinary course of business; provided, however, that the Reorganized Debtors are expressly permitted to enter into and to obtain (1) the New Credit Facility from the New Credit Facility Lender pursuant to the terms of the New Credit Facility Documents, (2) financing for normal course purchases through lease financing or other similar arrangements, and (3) replacement financing to make the final payments to Texas Capital Bank and Cargill during no later than the forty-second (42) month following the Effective Date.

(g) Notwithstanding the treatment of the Allowed Secured Cargill Claim set forth in paragraph (b) above, if a Sale Trigger occurs, the holder of the Allowed Secured Cargill Claim shall instead receive payment from the proceeds of the Post-Confirmation Sale consistent with section 4.5 below.

### 3.7 **Class 5: Allowed Other Secured Claims.**

3.7.1 **Classification.** Class 5 consists of Allowed Other Secured Claims. Class 5 consists of separate subclasses for each Allowed Other Secured Claim that may exist against the Debtors. Class 5 is Impaired by the Plan and the holders of Allowed Other Secured Claims are entitled to vote on the Plan.

3.7.2 **Treatment.** Allowed Other Secured Claims shall accrue interest at the rate of five percent (5%) per annum from the Effective Date. If the property securing an Allowed Other Secured Claim is sold, the holder of the Allowed Other Secured Claim shall be entitled to payment of such Claim from the sale proceeds. Otherwise, the holder of such Allowed Other Secured Claim shall be paid in full in Cash in sixteen (16) equal quarterly installments of principal and interest. Each installment shall be due on the last Business Day of the month following the end of each calendar quarter following the date that the Claim is

determined to be an Allowed Other Secured Claim. Payment of each Allowed Other Secured Claim shall be secured by the applicable collateral securing such Claim. Each holder of an Allowed Other Secured Claim shall be entitled to assert a Class 7 General Unsecured Claim for any Deficiency Claim. Notwithstanding the foregoing, if a Sale Trigger occurs, the holder of the Allowed Other Secured Claim shall instead receive payment from the proceeds of the Post-Confirmation Sale consistent with section 4.5 below.

### 3.8 **Class 6: Allowed Operator Claims.**

3.8.1 **Classification.** Class 6 shall consist of all Allowed Operator Claims. Class 6 is Impaired by the Plan and the holders of Allowed General Unsecured Claims are entitled to vote on the Plan.

3.8.2 **Treatment.** Allowed Operator Claims shall include interest on past due amounts at the rate set forth in the applicable Joint Operating Agreement to the extent the holder of the Operator Claim has a valid and perfected lien on the Debtors' Assets subject thereto. Subject to the terms herein, each holder of an Allowed Operator Claim, in full satisfaction, settlement and release of and in exchange for all such Allowed Operator Claims, shall be entitled to receive (1) a payment equal to 33% of the Allowed Operator Claim within thirty (30) days after such claim becomes an Allowed Operator Claim, (2) a second payment equal to 33% of the Allowed Operator Claim within sixty (60) days after such claim becomes an Allowed Operator Claim, and (3) a payment equal to 34% of the Allowed Operator Claim within ninety (90) days after such claim becomes an Allowed Operator Claim. In no event shall a holder of an Allowed Operator Claim be entitled to collect any amount above the amount of such Allowed Operator Claim. At that time, the holder's Allowed Operator Claim will be fully satisfied and released.

### 3.9 **Class 7: General Unsecured Claims.**

3.9.1 **Classification.** Class 7 shall consist of all Allowed General Unsecured Claims. Class 7 is Impaired by the Plan and the holders of Allowed General Unsecured Claims are entitled to vote on the Plan.

3.9.2 **Treatment.** Subject to the terms herein, each holder of an Allowed General Unsecured Claim, in full satisfaction, settlement and release of and in exchange for all such Allowed General Unsecured Claims, shall be entitled to receive (1) a payment equal to 33% of the Allowed General Unsecured Claim at the end of the tenth full month after the Effective Date, and (2) a second payment equal to 33% of the Allowed General Unsecured Claim at the end of the eleventh month after the Effective Date, and (3) a payment equal to 34% of the Allowed General Unsecured Claim at the end of the twelfth month after the Effective Date; provided, however, that if a Sale Trigger occurs before holders of Allowed General Unsecured Claims are paid in full, each holder of an Allowed General Unsecured Claim shall instead receive its *pro rata* share, if any, of the proceeds from the Post-Confirmation Sale of the Reorganized Debtors' Assets consistent with section 4.5. In no event shall a holder of an Allowed General Unsecured Claim be entitled to collect any amount above the amount of such Allowed General Unsecured Claim. At that time, the holder's Allowed General Unsecured Claim will be fully satisfied and released.

**3.10 Class 8: Suspense Claims.**

**3.10.1 Classification.** Class 8 shall consist of all Allowed Suspense Claims. Class 8 is Impaired by the Plan and the holders of Allowed Suspense Claims are entitled to vote on the Plan.

**3.10.2 Treatment.** Subject to the terms herein, including Section 7.3.2, each holder of an Allowed Suspense Claim, in full satisfaction, settlement and release of and in exchange for all such Allowed Suspense Claims, shall be entitled to receive twenty-four (24) equal monthly payments beginning within ninety (90) days after such claim becomes an Allowed Suspense Claim; provided, however, that if a Sale Trigger occurs before holders of Allowed Suspense Claims are paid in full, each holder of an Allowed Suspense Claim shall instead receive its *pro rata* share, if any, of the proceeds from the Post-Confirmation Sale of the Reorganized Debtors' Assets consistent with section 4.5. In no event shall a holder of an Allowed Suspense Claim be entitled to collect any amount above the amount of such Allowed Suspense Claim. At that time, the holder's Allowed Suspense Claim will be fully satisfied and released.

**3.11 Class 9: Intercompany Claims.**

**3.11.1 Classification.** Class 9 shall consist of all Intercompany Claims. Class 8 is Unimpaired by the Plan and the holders of Intercompany Claims are not entitled to vote on the Plan.

**3.11.2 Treatment.** Subject to the terms herein, all Intercompany Claims shall be reinstated and shall continue to be maintained on the Reorganized Debtors' books and records.

**3.12 Class 10: Activa Class A Interests and Tiva Interests.**

**3.12.1 Classification.** Class 10 shall consist of all Activa Class A Interests, all Incentive Interests, and all Tiva Interests. Class 10 is Unimpaired by the Plan and the holders of Activa Class A Interests, Incentive Interests, and Tiva Interests are not entitled to vote on the Plan.

**3.12.2 Treatment.** All Holders of Activa Class A Interests, Incentive Interests and Tiva Interests shall retain their Interests. Until all holders of Allowed Claims in Classes 2 through 8 have received the Distributions to which they are entitled to under in Sections 3.3 through 3.10 of this Plan, the Reorganized Debtors may not cause or permit Reorganized Debtors to: (a) declare or pay any dividends, purchase, redeem, retire, defease or otherwise acquire for value the Interests now or hereafter outstanding; or (b) make any distribution of assets, Interests, obligations or securities to its members. Nothing in this Section shall restrict Reorganized Debtors from paying reasonable salaries and benefits to officers or employees of Reorganized Debtors or reimbursing officers or employees of Reorganized Debtors for ordinary and reasonable business expenses incurred on behalf of Reorganized Debtors.

**3.13 Class 11: Activa Class B Interests.**

**3.13.1 Classification.** Class 11 shall consists of all Activa Class B Interests. Class 11 is Impaired by the Plan and the holders of Activa Class B Interests are not entitled to vote on the Plan.

**3.13.2 Treatment.** Consistent with the Activa Company Agreement Amendment, all Activa Class B Interests shall be cancelled and the holder of the Activa Class B Interests will not receive any distribution or other remuneration on account of the Activa Class B Interests.

**3.14 Vacant Classes.** Any Class of Claims that does not have a holder of an Allowed Claim or a Claim temporarily Allowed by the Bankruptcy Court in an amount greater than zero as of the date of the Confirmation Hearing shall be considered vacant and shall be presumed to have accepted the Plan.

**3.15 Insurance.** Notwithstanding anything to the contrary herein, if any Allowed Claim is covered by insurance, such Claim shall first be paid from such insurance with the balance, if any, treated in accordance with the provisions of the Plan governing the Class applicable to such Claim.

**3.16 Special Provision Governing Unimpaired Claims.** Except as otherwise provided herein, nothing under this Plan shall affect Reorganized Debtors' rights and defenses in respect of any Claim that is Unimpaired under this Plan, including, without limitation, all rights in respect of (1) legal and equitable defenses to, (2) setoff or recoupment against, or (3) counter-claims with respect to any such Unimpaired Claims.

**IV.  
MEANS FOR IMPLEMENTATION**

**4.1 Survival of Activa and Tiva.** Activa and Tiva will, as Reorganized Debtors, continue to exist after the Effective Date as limited liability companies with all the powers of a limited liability company pursuant to applicable law and the Company Agreement Amendments.

**4.2 Vesting of Assets.** Except as otherwise expressly provided in this Plan, the Confirmation Order, or any Plan Document, pursuant to sections 1123(a)(5), 1123(b)(3), 1141(b) and (c) and other applicable provisions of the Bankruptcy Code, on and after the Effective Date, all property and Assets of the Estates of the Debtors, and any other Assets or property acquired by the Debtors or the Reorganized Debtors during the Chapter 11 Cases or under or in connection with this Plan shall vest in the Reorganized Debtors free and clear of all Claims, Liens, charges, and other encumbrances, subject to the Plan Documents. On and after the Effective Date, the Reorganized Debtors may (i) operate their respective business, (ii) use, acquire, and dispose of their respective property, and (iii) compromise or settle any Claims, in each case without notice to, supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than restrictions expressly imposed by this Plan or the Confirmation Order.

It is the intent of this Plan to have the Debtors' current NOLs, loss carry-forwards, and/or other tax attributes survive throughout the life of the Plan. The Debtors' NOLs, loss carry-forwards, and/or other tax attributes will be retained by the Reorganized Debtors.

All intercompany claims between the Debtors as of the Effective Date shall be reinstated and shall continue to be maintained on the books and records of the Reorganized Debtors.

**4.3 Exit Financing: New Credit Facility.** The Debtors have negotiated with the New Credit Facility Lender the terms and conditions of the New Credit Facility, which will be in an amount up to \$4.87 million, inclusive of the amount of the DIP Claims. The complete terms and conditions of the New Credit Facility shall be reflected in the New Credit Facility Documents filed in connection with the Plan Supplement and shall be incorporated herein by reference in their entirety. The proceeds of the New Credit Facility shall be used solely for new development as set forth in the New Credit Facility Documents and shall not be used for any other corporate purposes by the Reorganized Debtors.

On the Effective Date, the Reorganized Debtors shall be authorized to enter into the New Credit Facility and execute the New Credit Facility Documents substantially in the form contained in the Plan Supplement, and any related agreements or filing without the need for any further corporate or organizational action and without further action by or approval of the Bankruptcy Court.

Confirmation shall be deemed approval of the New Credit Facility (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred and fees paid by the Debtors or the Reorganized Debtors in connection therewith), to the extent not approved by the Bankruptcy Court previously, and the Reorganized Debtors shall be authorized to execute and deliver those documents necessary or appropriate to obtain the New Credit Facility, without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Reorganized Debtors may deem to be necessary to consummate entry into the New Credit Facility.

On the Effective Date, (a) upon the granting of Liens in accordance with the New Credit Facility, the New Credit Facility Lender shall have valid, binding and enforceable first Liens on the collateral specified in the New Credit Facility Documents; and (b) upon the granting of mortgages, pledges, Liens and other security interests in accordance with the New Credit Facility Documents, the mortgages, pledges, Liens and other security interests granted to secure the obligations arising under the New Credit Facility shall be granted in good faith and shall be deemed not to constitute a fraudulent conveyance or fraudulent transfer, shall not otherwise be subject to avoidance, and the priorities of such Liens and security interests shall be as set forth in the New Credit Facility Documents.

Until the payment in full of the Allowed Secured Texas Capital Bank Claim and the Allowed Secured Cargill Claim, the Reorganized Debtors shall provide notice of any defaults under the New Credit Facility Documents to Texas Capital Bank and Cargill. The New Credit Facility Documents shall require the Reorganized Debtors to provide immediate notice to Texas Capital Bank and Cargill (1) in the event of the occurrence of an Underpaid Month and (2) if the



subsequent payment of 100% of the Net Cash Flow from the Program Wells does not equal 1.39% of the Outstanding Facility Balance (all as defined in the New Credit Facility Documents). In addition, until the payment in full of the Allowed Secured Texas Capital Bank Claim, the Reorganized Debtors shall consult with Texas Capital Bank on the proposed terms of any waivers of any material defaults by the New Credit Facility Lender or proposed amendments to the New Credit Facility Documents detrimental to the interests of Texas Capital Bank and/or Cargill. The terms of such waivers or amendments shall be subject to Texas Capital Bank's agreement, which agreement shall not be unreasonably withheld. To the extent Texas Capital Bank withholds such agreement, the Bankruptcy Court shall hold an emergency hearing thereon and the parties shall not object to the expedited setting.

Texas Capital Bank may, but is not obligated to, cure or payoff any default under the New Credit Facility by Reorganized Debtors, with Texas Capital Bank subrogated to the New Credit Facility Lender's position if cured or paid-off.

Any material defaults under the New Credit Facility Documents shall also be defaults under the New TCB Credit Documents. For the avoidance of doubt, defaults giving rise to Sale Triggers are material defaults.

#### 4.4 **Performance Requirements.**

4.4.1 **Debt Coverage Ratio Milestones.** Absent waiver by Texas Capital Bank, Reorganized Debtors shall meet the following "**Debt Coverage Ratio Milestones**":

(a) The Reorganized Debtors shall maintain at the end of each fiscal quarter, commencing with the fiscal quarter ending December 31, 2023, a Funded Debt to EBITDAX ratio less than or equal to 3.5 to 1.0. For the initial quarter, EBITDAX for the fiscal quarter will be multiplied by four (4) to determine annual EBITDAX and will build thereafter: in the quarter ending March 31, 2024, EBITDAX for that fiscal quarter will be added to the prior fiscal quarter and multiplied by two (2), the quarter ending June 30, 2024, EBITDAX for that fiscal quarter will be added to the two (2) prior fiscal quarters divided by three (3) and multiplied by (4), for the quarter ending September 30, 2024, EBITDAX for that quarter will be added to the three prior fiscal quarters.

(b) The Reorganized Debtors shall maintain at the end of each fiscal quarter, commencing with the fiscal quarter ending December 31, 2024, a Funded Debt to EBITDAX ratio less than or equal to 2.75 to 1.0. For the initial quarter, EBITDAX for the fiscal quarter will be multiplied by four (4) to determine annual EBITDAX and will build thereafter: the quarter ending March 31, 2025, EBITDAX for that fiscal quarter will be added to the prior fiscal quarter and multiplied by two (2), the quarter ending June 30, 2025, EBITDAX for that fiscal quarter will be added to the two (2) prior fiscal quarters divided by three (3) and multiplied by (4), for the quarter ending September 30, 2025, EBITDAX for that quarter will be added to the three prior fiscal quarters.

(c) The Reorganized Debtors shall maintain at the end of each fiscal quarter, commencing with the fiscal quarter ending December 31, 2025, a Funded Debt to EBITDAX ratio less than or equal to 2.25 to 1.0. For the initial quarter EBITDAX for



the fiscal quarter will be multiplied by four (4) to determine annual EBITDAX and will build thereafter: the quarter ending March 31, 2026, EBITDAX for that fiscal quarter will be added to the prior fiscal quarter and multiplied by two (2), the quarter ending June 30, 2026, EBITDAX for that fiscal quarter will be added to the two (2) prior fiscal quarters divided by three (3) and multiplied by (4), for the quarter ending September 30, 2026, EBITDAX for that quarter will be added to the three prior fiscal quarters. Thereafter, EBITDAX for the current fiscal quarter will be added to the prior three (3) fiscal quarters.

(d) Once annually beginning on December 31, 2024, in conjunction with the issuance of the engineering reserve report of the Reorganized Debtors' oil and gas producing properties as audited by a third party as required by Section 3.5.2(d)(2) and 3.6.2(c)(2) above, the Reorganized Debtors' net present worth discounted at 10 percent per annum under New York Mercantile Exchange strip pricing from the then-preceding 180 days shall exceed the outstanding Funded Debt owed by the Reorganized Debtors (*i.e.*, the ratio of PV10 value of the Reorganized Debtors' assets to the Reorganized Debtors' outstanding Funded Debt shall be greater than 1:1).

**4.4.2 Exit Facility Milestones.** Absent waiver by the New Credit Facility Lender and Texas Capital Bank, Reorganized Debtors shall meet the following "**Exit Facility Milestones**":

(a) Reorganized Debtors shall meet the Initial Well AFE Deadline (as defined in the New Credit Facility Documents);

(b) Reorganized Debtors shall meet the Initial Well Production Forecast; and

(c) Reorganized Debtors shall not permit there to be three consecutive Underpaid Months (as defined in the New Credit Facility Documents) for which the New Credit Facility Lender does not receive payment of 1.39% of the outstanding balance owed as of the beginning of such month under the New Credit Facility Documents.

**4.4.3 General and Administrative Expenses.** The Reorganized Debtors shall spend no more than \$2 million on general and administrative expenses during 2023, no more than \$2.163 million on general and administrative expenses during 2024, and (3) no more than \$2.347 million on general and administrative expenses during 2025.

**4.4.4 Hedges.** Within 90 days after the Effective Date, the Debtors shall procure hedges on 50% of production from wells on which Texas Capital Bank and Cargill retain a first lien after confirmation of this Plan for 24 months, subject to refresh not less than every 6 months; *provided, however*, that it shall not be a default under either this Plan or the New TCB Credit Documents if (1) the Debtors are unable to obtain hedges at a reasonable cost per contract based upon the prevailing market conditions and underwriting standards then available, or (2) the Debtors' proposed hedge provider, on the one hand, and Texas Capital Bank and Cargill, on the other hand, are not able to agree to the terms of any subordination agreement, intercreditor agreement, or other similar agreement necessary for the Debtors to obtain such hedges. If the

Reorganized Debtors are unable to procure hedges as outlined herein, then the Reorganized Debtors must continue to try to procure hedges monthly until the payment in full of the Allowed Secured Texas Capital Bank Claim.

4.5 **Post-Confirmation Sale.** The following shall each constitute “**Sale Triggers**”: (1) the Reorganized Debtors are unable to meet any of the Exit Facility Milestones; or (2) the Reorganized Debtors are unable to meet any of the Debt Coverage Ratio Milestones.

If a Sale Trigger occurs, the Reorganized Debtors shall proceed with the Post-Confirmation Sale, which is expected to occur pursuant to the following timeline:

- The Reorganized Debtors shall begin the sale process within thirty days after a Sale Trigger occurs, including providing timely notice to Holders of Allowed Claims that have not yet been paid in full that the Post-Confirmation Sale process has commenced. The sale procedures proposed by the Debtors must contain provisions (1) requiring the proposed buyer(s) to apportion specific value to the purchased assets to ensure that secured parties receive payment from the sale of their collateral, and (2) incorporating the protections afforded to Texas Capital Bank and Cargill in the Final Cash Collateral Order, including the right to credit bid. The sale procedures shall be subject to the approval of Texas Capital Bank in all respects, which approval shall not be unreasonably withheld.
- The Reorganized Debtors will engage the Investment Banker to assist in the sale process within thirty days after a Sale Trigger occurs.
- The Investment Banker will then engage in due diligence for approximately 3-4 weeks that will include analyzing the Reorganized Debtors’ technical, production, and land and accounting data, preparing all sales materials, and creating a virtual data room.
- The Investment Banker will then engage in a marketing period of 4-5 weeks that will include, among other things, identifying prospective buyers, distributing marketing packages, facilitating data room presentations, and soliciting initial offers.
- The Investment Banker will then assist the Reorganized Debtors in negotiating and closing the sale.
- Any asset purchase agreement(s) executed in connection with the Post-Confirmation Sale must contain provisions that apportion specific value to purchased assets, in order to ensure that secured parties receive payment from the sale of their collateral.

Absent the consent of Texas Capital Bank, Cargill and the New Credit Facility Lender or an order of the Bankruptcy Court otherwise, the Reorganized Debtors shall complete the Post-Confirmation Sale process within 180 days after the Investment Banker is engaged and shall proceed to distribute the proceeds from the Post-Confirmation Sale, after deducting any

remaining operational costs, the costs of the sale itself including payment of a success fee to the Investment Banker (which is anticipated to be the greater of \$350,000 or 3% of the aggregate consideration obtained from the sale of the Reorganized Debtors' Assets), and any remaining priority or administrative claims, to Holders of Allowed Claims on a *pro rata* basis in accordance with the priority of treatment of such Allowed Claims. Secured creditors shall only receive payment from the proceeds of their collateral. Notwithstanding the foregoing, the ultimate sale procedures shall be subject to approval of Texas Capital Bank, Cargill and the New Credit Facility Lender, which approval shall not be unreasonably withheld.

#### 4.6 **Preservation of Causes of Action.**

4.6.1 **Maintenance of Causes of Action.** Except as otherwise provided in this Article IV or elsewhere in this Plan or the Confirmation Order, and subject to the protections in the Final Cash Collateral Order, after the Effective Date, any and all applicable Causes of Action and Avoidance Actions, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding filed in the Chapter 11 Cases shall vest in the Reorganized Debtors. The Reorganized Debtors shall have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all applicable Causes of Action and Avoidance Actions without notice to or approval from the Bankruptcy Court.

4.6.2 **Preservation of All Causes of Action Not Expressly Settled or Released.** All Causes of Action and Avoidance Actions are reserved for later adjudication by the Reorganized Debtors (including, without limitation, Causes of Action and Avoidance Actions not specifically identified or of which the Plan Proponents may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Plan Proponents at this time or facts or circumstances that may change or be different from those the Plan Proponents now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action or Avoidance Actions upon or after the Confirmation or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except in each case where such Causes of Action or Avoidance Actions have been expressly waived, relinquished, released, compromised or settled in this Plan (including, without limitation, and for the avoidance of doubt, the Release contained in Article IX and Exculpation contained in Article IX hereof) or any other Final Order.

4.7 **Amendment of Company Agreements.** On the Effective Date, the Activa and Tiva company agreements shall be amended as provided in the Company Agreement Amendments.

4.8 **Managers and Officers.** From and after the Effective Date, the current managers and officers of the Debtors shall continue in their current roles.

4.9 **Company Authorization.** On the Effective Date, all matters provided for under this Plan that would otherwise require approval of the members, boards, or managers of the Debtors shall be deemed to have occurred and shall be in effect from and after the Effective

Date, without any requirement of further action by the members, boards, or managers of the Debtors.

4.10 **Effectuating Documents and Further Transactions.** On the Effective Date, the Reorganized Debtors shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, and other agreements and take such other actions as may be reasonably necessary to effectuate and further evidence the terms and conditions of the Plan.

4.11 **Authority to Object to and Settle Disputed Claims.** From and after the Effective Date, the Reorganized Debtors shall be authorized with respect to those Claims which are not Allowed Claims hereunder or by Final Order, (i) to object to, and seek estimation of, any Claims filed against, and (ii) pursuant to Bankruptcy Rule 9019(b) and section 105(a) of the Bankruptcy Code, to compromise and settle Disputed Claims, in the ordinary course of business and without further notice to or order of the Bankruptcy Court.

4.12 **Provisions to invoke cramdown proceedings, if necessary.** If all of the applicable requirements of section 1129(a) of the Bankruptcy Code are met other than subparagraph 8 of said such section (which requires that all impaired Classes accept the Plan), the Plan Proponents will then seek confirmation pursuant to section 1129(b) of the Bankruptcy Code, which is commonly referred to as the “cram-down” provision. For purposes of seeking Confirmation under the cram-down provision of the Bankruptcy Code, if that alternative means of Confirmation proves to be necessary, the Plan Proponents reserve the right to modify or vary the terms of the Plan with regard to the Allowed Claims of any rejecting classes, so as to comply with the requirements of section 1129(b).

## V. EXECUTORY CONTRACTS AND LEASES

5.1 **Assumption of Executory Contracts and Unexpired Leases.** On the Effective Date, all executory contracts and unexpired leases of the Debtors will be assumed by the Reorganized Debtors in accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except for those executory contracts and unexpired leases that:

- (i) have been assumed or rejected by prior order of the Bankruptcy Court;
- (ii) are the subject of a motion to reject pending on the Effective Date;
- (iii) are identified in the Plan Documents as being rejected; or
- (iv) are rejected or terminated pursuant to the terms of this Plan.

Without amending or altering any prior order of the Bankruptcy Court approving the assumption or rejection of any executory contract or unexpired lease, entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

To the extent any provision in any executory contract or unexpired lease assumed or assumed and assigned (as applicable) pursuant to this Plan (including, without limitation, any “change of control” provision) prohibits, restricts or conditions, or purports to prohibit, restrict or condition, or is modified, breached or terminated, or deemed modified, breached or terminated by, (i) the commencement of the Chapter 11 Cases or the insolvency or financial condition of Debtors at any time before the closing of the Chapter 11 Cases, (ii) Debtors or Reorganized Debtors’ assumption or assumption and assignment (as applicable) of such executory contract or unexpired lease, or (iii) the Confirmation of this Plan, then such provision shall be deemed modified such that the transactions contemplated by this Plan shall not entitle the non-debtor party thereto to modify or terminate such executory contract or unexpired lease or to exercise any other default-related rights or remedies with respect thereto, and any required consent under any such contract or lease shall be deemed satisfied by the Confirmation of the Plan.

Each executory contract and unexpired lease assumed and/or assigned pursuant to this Plan shall revest in and be fully enforceable by the Reorganized Debtors in accordance with its terms and conditions, except as modified by the provisions of this Plan, any order of the Bankruptcy Court approving its assumption and/or assignment, or applicable law.

The inclusion or exclusion of a contract or lease on any schedule or exhibit shall not constitute an admission by Debtors that such contract or lease is an executory contract or unexpired lease or that Debtors have any liability thereunder.

**5.2 Cure of Defaults; Assignment of Executory Contracts and Unexpired Leases.** Any defaults under each executory contract and unexpired lease to be assumed, or assumed and assigned, pursuant to this Plan shall be satisfied, pursuant to and to the extent required by section 365(b)(1) of the Bankruptcy Code, by payment of the applicable default amount in Cash on the Effective Date or on such other terms as the Bankruptcy Court may order or the parties to such executory contracts or unexpired leases may otherwise agree in writing (the “**Cure Claim Amount**”).

In the event of an assumption, or an assumption and assignment, of an executory contract or unexpired lease under this Plan, at least twenty-one (21) days prior to the Confirmation Hearing, the Plan Proponents shall file and serve upon counterparties to such executory contracts and unexpired leases, a notice of the proposed assumption, or proposed assumption and assignment, which will: (a) list the applicable Cure Claim Amount, if any; (b) if applicable, identify the party to which the executory contract or unexpired lease will be assigned; (c) describe the procedures for filing objections thereto; and (d) explain the process by which related disputes will be resolved by the Bankruptcy Court.

Any objection by a counterparty to an executory contract or unexpired lease to a proposed assumption, or proposed assumption and assignment, or any related cure amount must be filed, served and actually received by the Plan Proponents at least seven (7) days prior to the Confirmation Hearing (notwithstanding anything in the Schedules or a Proof of Claim to the contrary). Any non-Debtor party to an executory contract or unexpired lease that fails to object timely to the proposed assumption, or proposed assumption and assignment, or cure amount will be deemed to have consented to such matters and will be deemed to have forever released and waived any objection to such proposed assumption, proposed assumption and assignment, and

cure amount. The Confirmation Order shall constitute an order of the Bankruptcy Court approving each proposed assumption, or proposed assumption and assignment, of executory contracts and unexpired leases pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

In the event of a dispute regarding (a) the amount of any cure payment, (b) the ability of a Debtor or 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 assumed and assigned, or (c) any other matter pertaining to assumption or assignment, the applicable cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving such assumption, or assumption and assignment. If such objection is sustained by Final Order of the Bankruptcy Court, the Reorganized Debtors may elect to reject such executory contract or unexpired lease in lieu of assuming or assigning it. The Reorganized Debtors shall be authorized to effect such rejection by filing a written notice of rejection with the Bankruptcy Court and serving such notice on the applicable counterparty within ten (10) days of the entry of such Final Order.

Subject to any cure claims filed with respect thereto, assumption or assumption and assignment of any executory contract or unexpired lease pursuant to this Plan shall result in the full release and satisfaction of any Claims or defaults, 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 prior to the effective date of assumption or assumption and assignment, in each case as provided in section 365 of the Bankruptcy Code. Any Proofs of Claim filed with respect to an executory contract or unexpired lease that has been assumed or assumed and assigned by Final Order shall be deemed disallowed and expunged (subject to any cure claims filed with respect thereto), without further notice to or action, order, or approval of the Bankruptcy Court.

With respect to any executory contract or unexpired lease assumed and assigned pursuant to this Plan, upon and as of the Effective Date, the applicable assignee shall be deemed to be substituted as a party thereto for the Debtor party to such assigned executory contract or unexpired lease and, accordingly, the Debtors and the Reorganized Debtors shall be relieved, pursuant to and to the extent set forth in section 365(k) of the Bankruptcy Code, from any further liability under such assigned executory contract or unexpired lease.

**5.3 Rejection of Executory Contracts and Unexpired Leases.** The Plan Proponents reserve the right, at any time prior to the Effective Date, except as otherwise specifically provided herein, to seek to reject any contract or lease to which a Debtor is a party and to file a motion requesting authorization for the rejection of any such contract or lease. The Confirmation Order shall constitute an order of the Bankruptcy Court approving the rejections described in this Article V pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. Rejection of any executory contract or unexpired lease pursuant to this Plan or otherwise shall not constitute a termination of any preexisting obligations owed to the Debtors or the Reorganized Debtors, as applicable, under such executory contracts or unexpired leases.



**5.4 Claims on Account of the Rejection of Executory Contracts and Unexpired Leases.** All Proofs of Claim with respect to Claims arising from the rejection of executory contracts or unexpired leases, pursuant to this Plan or the Confirmation Order, if any, must be filed with the Bankruptcy Court within twenty-eight (28) days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection.

Any Entity that is required to file a Proof of Claim arising from the rejection of an executory contract or an unexpired lease that fails to timely do so shall be forever barred, estopped and enjoined from asserting such Claim, and such Claim shall not be enforceable, against the Debtors, the Reorganized Debtors the Estates, or the Assets, and the Debtors, the Reorganized Debtors and their Estates and Assets and property shall be forever discharged from any and all indebtedness and liability with respect to such Claim unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article IX hereof. To the extent applicable, the limitations imposed by section 502 of the Bankruptcy Code shall apply to the relevant rejection Claim, including, without limitation, subsection 502(b)(6) and subsection 502(b)(7) thereof.

**5.5 Extension of Time to Assume or Reject.** Notwithstanding anything to the contrary set forth in Article V of this Plan, in the event of a dispute as to whether a contract is executory or a lease is unexpired, the right of the Reorganized Debtors to move to assume or reject such contract or lease shall be extended until the date that is fourteen (14) days after entry of a Final Order by the Bankruptcy Court determining that the contract is executory or the lease is unexpired. The deemed assumption provided for in Article V of this Plan shall not apply to any such contract or lease, and any such contract or lease shall be assumed or rejected only upon motion of the Reorganized Debtors following the Bankruptcy Court's determination that the contract is executory or the lease is unexpired.

**5.6 Surety Bond Obligations.** Notwithstanding any other provisions of the Plan or any order of the Bankruptcy Court, on the Effective Date, all rights and obligations related to the (i) Debtors' current surety bonds issued by Lexon Insurance Company ("**Surety**") and maintained in the ordinary course of business; (ii) surety payment and indemnity agreements, setting forth the Surety's rights against the Debtors, and the Debtors' obligations to pay and indemnify the Surety from any loss, cost, or expense that the Surety may incur, in each case, on account of the issuance of any surety bonds on behalf of the Debtors; (iii) surety collateral agreements governing collateral, if any, in connection with the Debtors' surety bonds; and/or (iv) ordinary course premium payments to the Surety for the Debtors' surety bonds (collectively, the "**Surety Bond Program**," and the Debtors' obligations arising therefrom, the "**Surety Bond Obligations**") shall be reaffirmed and ratified by the applicable Reorganized Debtors and continue in full force and effect and are not discharged, enjoined or released by the Plan in any way. For the avoidance of doubt, nothing in the Plan or other agreements between the Debtors and third parties, including, without limitation, any exculpation, release, injunction, exclusions and discharge provision of the Plan, including, without limitation, any of those provisions contained in Section IX of the Plan, shall bar, alter, limit, impair, release or modify or enjoin any Surety Bond Obligations. The Surety is deemed to have opted out of any release, exculpation, injunction provisions of the Plan that apply or could be interpreted to apply to the Surety, its rights or claims in any respect, and is otherwise not a Releasing Party under the Plan.



The Surety Bond Program and all Surety Bond Obligations related thereto shall be treated by the Reorganized Debtors and the Surety in the ordinary course of business as if these Chapter 11 Cases had not been commenced. For the avoidance of any doubt, with a reservation of rights to all parties, and only to the extent applicable, any agreements related to the Surety Bond Program are assumed by the Debtors and the Reorganized Debtors pursuant to section 365 of the Bankruptcy Code upon the Effective Date. Nothing in the Plan or this paragraph shall affect in any way the Surety's rights against any non-debtor, or any non-debtor's rights against the Surety, including under the Surety Bond Program or with regard to the Surety Bond Obligations. Notwithstanding the foregoing, the Reorganized Debtors shall be under no obligations to continue the Surety Bond Program with the Surety once the current surety bonds expire during the ordinary course of business.

**5.7 Treatment of Certain Insurance Policies.** Nothing in the Plan, including any releases, shall diminish or impair the enforceability of any policies of insurance that cover claims against the Debtors or any other Person, subject to the occurrence of the Effective Date.

## **VI. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS**

### **6.1 Resolution of Disputed Claims.**

**6.1.1 Allowance of Claims.** After the Effective Date, the Reorganized Debtors shall have and shall retain any and all available rights and defenses that the Debtors had with respect to any Claim, including, without limitation, the right to assert any objection to Claims based on the limitations imposed by section 502 of the Bankruptcy Code. The Reorganized Debtors may contest the amount and validity of any Disputed Claim or contingent or unliquidated Claim in the ordinary course of business in the manner and venue in which such Claim would have been determined, resolved or adjudicated if the Chapter 11 Cases had not been commenced or in the Bankruptcy Court and may also object to such Claims in the Bankruptcy Court.

**6.1.2 Prosecution of Objections to Claims.** After the Effective Date, the Reorganized Debtors shall have the exclusive authority to file objections to Claims and settle, compromise, withdraw or litigate to judgment objections to any and all Claims, regardless of whether such Claims are in an Unimpaired Class or otherwise; provided, however, this provision shall not apply to Professional Fee Claims, which may be objected to by any party-in-interest in these Chapter 11 Cases. From and after the Effective Date, the Reorganized Debtors may settle or compromise any Disputed Claim without any further notice to or action, order or approval of the Bankruptcy Court.

**6.1.3 Claims Estimation.** After the Effective Date, the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any Disputed Claim or contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any such Claims, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection. 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. The rights and objections of all parties are reserved in connection with any such estimation.

**6.1.4 Deadline to File Objections to Claims.** Any objections to Claims shall be filed by no later than the Claims Objection Deadline; provided that nothing contained herein shall limit the Reorganized Debtors' right to object to Claims, if any, filed or amended after the Claims Objection Deadline. Moreover, notwithstanding the expiration of the Claims Objection Deadline, the Reorganized Debtors shall continue to have the right to amend any claims objections and to file and prosecute supplemental objections and counterclaims to a Disputed Claim until such Disputed Claim is or becomes an Allowed Claim pursuant to Final Order of the Bankruptcy Court.

**6.2 No Distributions Pending Allowance.** Notwithstanding any other provision of this Plan to the contrary, no payments or Distributions of any kind or nature shall be made with respect to all or any portion of a Claim or a Disputed Claim unless and until all objections to such Claim or Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Claim or Disputed Claim has become an Allowed Claim pursuant to a Final Order.

**6.3 Distributions on Account of Disputed Claims Once They Are Allowed.** Beginning within thirty days of when a Claim or Disputed Claim becomes an Allowed Claim, the Reorganized Debtors will make Distributions on account of such Claim or Disputed Claim that has become an Allowed Claim pursuant to the applicable provisions of Article VII of this Plan.

**6.4 Disputed Claims Reserve.** The Reorganized Debtors shall establish the Disputed Claims Reserve. The Disputed Claims Reserve shall equal an amount of Cash equal to 100% of Distributions, in each case to which holders of such Disputed Claims in each applicable Class would be entitled (if at all) under this Plan as of such date if such Disputed Claims were Allowed Claims in their respective Face Amount (or based on the Debtors' books and records if the applicable holder has not yet filed a Proof of Claim and the applicable Bar Date has not yet expired); provided, however, that the Reorganized Debtors shall have the right to file a motion seeking to estimate any Disputed Claims in accordance with Section 6.1.3 above.

## VII. PROVISIONS GOVERNING DISTRIBUTIONS

**7.1 Distributions for Claims Allowed as of the Effective Date.** Except as otherwise provided, Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made in accordance with Section 7.3. Any payment or Distribution required to be made under this Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Distributions on account of Disputed Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Section 6.3 hereof.

**7.2 No Post-Petition Interest on Claims.** Unless otherwise specifically provided for in this Plan, the Confirmation Order or Final Order of the Bankruptcy Court, or required by applicable bankruptcy law (including, without limitation, as required pursuant to section 506(b) or section 511 of the Bankruptcy Code), post-petition interest shall not accrue or be paid on any Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim.

**7.3 Delivery and Distributions; Undeliverable or Unclaimed Distributions.**

**7.3.1 Delivery of Distributions in General.** The Reorganized Debtors shall make Distributions to holders of Allowed Claims, or in care of their authorized agents, as appropriate, at the address for each such holder or agent as indicated on the Reorganized Debtors' books and records as of the date of any such Distribution; provided that the address for each holder of an Allowed Claim shall be deemed to be the address set forth in the latest Proof of Claim filed by such holder pursuant to Bankruptcy Rule 3001 as of the Distribution Date.

**7.3.2 Minimum Distributions.** Notwithstanding anything herein to the contrary, no interim Distribution shall be made on account of an Allowed Claim that is Impaired under this Plan if the amount of the Distribution is less than \$25.00, unless such Distribution is a final Distribution.

**7.3.3 Undeliverable Distributions.**

(a) **Holding of Certain Undeliverable Distributions.** If the Distribution to any holder of an Allowed Claim is returned to the Reorganized Debtors as undeliverable or is otherwise unclaimed, no further Distributions shall be made to such holder unless and until the Reorganized Debtors are notified in writing of such holder's then current address, at which time all currently due but missed Distributions shall be made to such holder. Undeliverable Distributions shall remain in the possession of the Reorganized Debtors until such time as any such Distributions become deliverable. Undeliverable Distributions shall not be entitled to any additional interest, dividends or other accruals of any kind on account of the Distribution being undeliverable.

(b) **Failure to Claim Undeliverable Distributions.** Any holder of an Allowed Claim (or any successor or assignee claiming by, through, or on behalf of, such holder) that does not assert a right pursuant to this Plan for an undeliverable or unclaimed Distribution within one hundred eighty days (180) days of the date such Distribution is due shall be deemed to have forfeited its rights for such undeliverable or unclaimed Distribution and any and all future Distributions, and shall be forever barred and enjoined from asserting any such rights for an undeliverable or unclaimed Distribution against the Reorganized Debtors or the Reorganized Debtors' Assets. Any undeliverable or unclaimed Distributions shall become the property of the Reorganized Debtors free and clear of any Claims notwithstanding any federal or state escheat laws to the contrary. Nothing contained in this Plan shall require the Debtors or the Reorganized Debtors to attempt to locate any holder of an Allowed Claim.

(c) **Failure to Present Checks.** Checks issued by the Reorganized Debtors on account of Allowed Claims shall be null and void if not negotiated within 120 days after the issuance of such check. Any holder of an Allowed Claim holding an un-negotiated check that does not request reissuance of such un-negotiated check within 180 days after the date of mailing or other delivery of such check shall have its Claim for such un-negotiated check discharged and be forever barred, estopped and enjoined from asserting any such Claim against the Reorganized Debtors or the Reorganized Debtors' Assets. Any such Distribution shall become the property of the Reorganized Debtors and shall be distributed to Reorganized Debtors, free and clear of any Claims notwithstanding any federal or state escheat laws to the contrary.

7.4 **Compliance with Tax Requirements.** All Persons holding Claims shall be required to provide Reorganized Debtors with an executed IRS Form W-9. No Distribution shall be made on account of a claim until the holder of such claim complies with this Section. Any claim for Distribution under the Plan shall be forfeited and barred if this Section is not complied with within one (1) year of the Effective Date.

## VIII. CONDITIONS PRECEDENT

8.1 **Conditions to Confirmation.** Confirmation of this Plan is conditioned upon the Confirmation Order being in a form and substance acceptable to the Debtors.

8.2 **Conditions to the Effective Date.** The Plan may not be consummated, and the Effective Date shall not occur, unless and until each of the conditions set forth below is satisfied:

- (a) the Confirmation Order shall be in a form and substance acceptable to the Debtors;
- (b) the Confirmation Order shall not then be stayed, vacated, or reversed or shall not have been amended without the agreement of the Debtors; and
- (c) the Confirmation Order shall not then be subject to a pending appeal, and the time to appeal or seek review or rehearing or leave to appeal has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending.

8.3 **Effect of Non-Occurrence of the Conditions to the Effective Date.** If each of the conditions to the occurrence of the Effective Date has not been satisfied or duly waived in accordance with the Plan on or before the first Business Day that is more than sixty (60) days after the Confirmation Date, or such later date as shall be agreed to by the Debtors, the Plan Proponents may schedule a status hearing with the Bankruptcy Court. If the Confirmation Order is ultimately vacated, the Plan shall be null and void in all respects, and nothing contained in the Plan shall constitute an admission, a waiver, or release of any Claims against or interests in the Estates.

## IX. DISCHARGE, INJUNCTION AND RELATED PROVISIONS

9.1 **Discharge of Claims.** To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, effective as of the Effective Date, all consideration distributed under this Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims, interests and Causes of Action of any kind or nature whatsoever against the Debtors or any of their assets or properties, and regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims, interests or Causes of Action.

Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtors and their Estates shall be deemed discharged and released under and to the fullest extent provided under sections 524 and 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code. Such discharge shall void any judgment obtained against the Debtors or the Reorganized Debtors at any time, to the extent that such judgment relates to a discharged Claim.

Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date: (i) the rights afforded herein and the treatment of all Claims and interests shall be in exchange for and in complete satisfaction, settlement, discharge, and release of all Claims and interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors, or any of their assets, property, or Estates; (ii) all Claims and interests shall be satisfied, discharged, and released in full, and the Debtors' liability with respect thereto shall be extinguished completely without further notice or action, and (iii) all Entities shall be precluded from asserting against the Debtors, the Estates, the Reorganized Debtors, each of their respective successors and assigns, and each of their respective assets and properties, any such Claims or interests, whether based upon any documents, instruments or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date or otherwise.

9.2 **Exculpation.** Effective as of the Effective Date, the Plan Proponents shall neither have nor incur any liability to any Entity for any claims or Causes of Action arising on or after the Petition Date and prior to or on the Effective Date for any act taken or omitted to be taken in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the Confirmation or consummation of this Plan, the Disclosure Statement, or any contract, instrument, release or other agreement or document created or entered into in connection with this Plan, or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors, the approval of the Disclosure Statement or Confirmation or consummation of this Plan; provided, however, that the foregoing provisions of this exculpation shall not operate to waive or release: (i) any Causes of Action arising from gross negligence, actual fraud or willful misconduct of such applicable Plan Proponent as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; (ii) the rights of any



Entity to enforce this Plan and the contracts, instruments, releases, and other agreements or documents delivered under or in connection with this Plan or assumed pursuant to this Plan or assumed pursuant to Final Order of the Bankruptcy Court; and/or (iii) any objections with respect to any Fee Claim; provided, further, that each Plan Proponent shall be entitled to rely upon the advice of counsel concerning its respective duties pursuant to, or in connection with, the above referenced documents, actions or inactions.

The foregoing exculpation shall be effective as of the Effective Date 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.

**9.3 Injunction.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PLAN OR THE CONFIRMATION ORDER, AS OF THE CONFIRMATION DATE, BUT SUBJECT TO THE OCCURRENCE OF THE EFFECTIVE DATE, ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS OR INTERESTS ARE, WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS, PERMANENTLY ENJOINED AFTER THE CONFIRMATION DATE FROM: (I) COMMENCING, CONDUCTING OR CONTINUING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY SUIT, ACTION OR OTHER PROCEEDING OF ANY KIND (INCLUDING ANY PROCEEDING IN A JUDICIAL, ARBITRAL, ADMINISTRATIVE OR OTHER FORUM) AGAINST OR AFFECTING THE DEBTORS, THE REORGANIZED DEBTORS, THE ESTATES OR ANY OF THEIR PROPERTY, OR ANY DIRECT OR INDIRECT TRANSFEREE OF ANY PROPERTY OF OR DIRECT OR INDIRECT SUCCESSOR IN INTEREST TO, ANY OF THE FOREGOING PERSONS OR ANY PROPERTY OF ANY SUCH TRANSFEREE OR SUCCESSOR; (II) ENFORCING, LEVYING, ATTACHING (INCLUDING ANY PRE-JUDGMENT ATTACHMENT), COLLECTING OR OTHERWISE RECOVERING BY ANY MANNER OR MEANS, WHETHER DIRECTLY OR INDIRECTLY, ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, OR THE ESTATES OR ANY OF THEIR PROPERTY, OR ANY DIRECT OR INDIRECT TRANSFEREE OF ANY PROPERTY OF OR DIRECT OR INDIRECT SUCCESSOR IN INTEREST TO, ANY OF THE FOREGOING PERSONS, OR ANY PROPERTY OF ANY SUCH TRANSFEREE OR SUCCESSOR; (III) CREATING, PERFECTING OR OTHERWISE ENFORCING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY LIEN AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, OR THE ESTATES OR ANY OF THEIR PROPERTY, OR ANY DIRECT OR INDIRECT TRANSFEREE OF ANY PROPERTY OF OR SUCCESSOR IN INTEREST TO, ANY OF THE FOREGOING PERSONS; (IV) ACTING OR PROCEEDING IN ANY MANNER, IN ANY PLACE WHATSOEVER, THAT DOES NOT CONFORM TO OR COMPLY WITH THE PROVISIONS OF THE PLAN TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW; AND (V) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN; PROVIDED, HOWEVER, THAT NOTHING CONTAINED HEREIN SHALL PRECLUDE ANY PERSON FROM EXERCISING ITS RIGHTS, OR OBTAINING BENEFITS, PURSUANT TO AND CONSISTENT WITH THE PROVISIONS OF THE PLAN, THE PLAN SUPPLEMENT, THE PLAN DOCUMENTS AND ANY OTHER CONTRACTS, INSTRUMENTS, RELEASES, AGREEMENTS AND DOCUMENTS DELIVERED IN CONNECTION WITH THE PLAN. ALL INJUNCTIONS

OR STAYS PROVIDED FOR IN THE CHAPTER 11 CASES UNDER SECTION 105 OR SECTION 362 OF THE BANKRUPTCY CODE, OR OTHERWISE, AND IN EXISTENCE ON THE CONFIRMATION DATE, SHALL REMAIN IN FULL FORCE AND EFFECT.

9.4 **Binding Nature of Plan.** ON THE EFFECTIVE DATE, AND EFFECTIVE AS OF THE EFFECTIVE DATE, THIS PLAN SHALL BIND, AND SHALL BE DEEMED BINDING UPON, THE DEBTORS, THE REORGANIZED DEBTORS, ANY AND ALL HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS, ALL ENTITIES THAT ARE PARTIES TO OR ARE SUBJECT TO THE SETTLEMENTS, COMPROMISES, RELEASES, DISCHARGES, AND INJUNCTIONS DESCRIBED IN THIS PLAN, EACH ENTITY ACQUIRING PROPERTY UNDER THIS PLAN, ANY AND ALL NON-DEBTOR PARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES WITH THE DEBTORS AND THE SUCCESSORS AND ASSIGNS OF EACH OF THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING WHETHER OR NOT SUCH ENTITY: (I) WILL RECEIVE OR RETAIN ANY PROPERTY, OR INTEREST IN PROPERTY, UNDER THIS PLAN; (II) HAS FILED A PROOF OF CLAIM OR INTEREST IN THE CHAPTER 11 CASES OR; (III) FAILED TO VOTE TO ACCEPT OR REJECT THIS PLAN, AFFIRMATIVELY VOTED TO REJECT THIS PLAN OR IS CONCLUSIVELY PRESUMED TO REJECT THIS PLAN.

9.5 **Protection Against Discriminatory Treatment.** To the extent provided by section 525 of the Bankruptcy Code and the Supremacy Clause of the United States Constitution, all Entities, including Governmental Units, shall not discriminate against the Reorganized Debtors, or deny, revoke, suspend or refuse to renew a license, permit, charter, franchise or other similar grant to, condition such a grant to, discriminate with respect to such a grant, against a Reorganized Debtor, solely because such Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor is granted or denied a discharge) or has not paid a debt that is dischargeable in the Chapter 11 Cases.

## X. RETENTION OF JURISDICTION

10.1 **Jurisdiction.** Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, on and after the Effective Date, retain exclusive jurisdiction over the Chapter 11 Cases and all Entities with respect to all matters related to the Chapter 11 Cases, the Debtors and this Plan the full extent as legally permissible, including, without limitation, jurisdiction to:

- (a) allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or interest, including, without limitation, the resolution of any request for payment of any Administrative Claim, Fee Claim, Priority Tax Claim, and the resolution of any and all objections to the allowance or priority of any such Claim or interest;



(b) grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date;

(c) hear and determine motions pursuant to section 363 and other applicable provisions of the Bankruptcy Code relating to any Post-Confirmation Sale;

(d) resolve any matters related to the assumption, assignment or rejection of any executory contract or unexpired lease to which a Debtor is party or with respect to which the Debtors or Reorganized Debtors may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, those matters related to any amendment to this Plan after the Effective Date to add executory contracts or unexpired leases to the list of Executory Contracts and Unexpired Leases to be assumed or rejected (as applicable);

(e) resolve any issues related to any matters adjudicated in the Chapter 11 Cases;

(f) ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of this Plan;

(g) decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action and Avoidance Actions that are pending as of the Effective Date or that may be commenced in the future;

(h) grant or deny any applications involving the Debtors that may be pending on the Effective Date or instituted by the Reorganized Debtors after the Effective Date, provided, however that the Reorganized Debtors shall reserve the right to commence applicable actions in all appropriate forums and jurisdictions;

(i) enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan or the Disclosure Statement;

(j) resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

(k) hear and determine all Causes of Action and Avoidance Actions that are pending as of the Effective Date or that may be commenced in the future;

(l) issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference with consummation or enforcement of this Plan;

(m) enforce the terms and conditions of this Plan, and the Confirmation Order;

(n) resolve any cases, controversies, suits or disputes with respect to the Release, the Exculpation, the Injunction and other provisions contained in Article IX hereof and enter such orders or take such other actions as may be necessary or appropriate to implement or enforce all such provisions;

(o) enter and implement such orders or take such other actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

(p) resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order or any release or exculpation adopted in connection with this Plan and;

(q) enter an order concluding or closing the Chapter 11 Cases.

Notwithstanding the foregoing, if the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this Article of the Plan, the provisions of this Article X shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

## **XI. MISCELLANEOUS PROVISIONS**

**11.1 Payment of Statutory Fees.** All outstanding fees payable pursuant to section 1930 of title 28, United States Code shall be paid when due.

**11.2 Modification of Plan.** Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Plan Proponents reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order; and (b) after the entry of the Confirmation Order, the Reorganized Debtors may, upon order of the Bankruptcy Court, amend or modify this Plan in accordance with section 1127(b) of the Bankruptcy Code. Notwithstanding the foregoing, the Reorganized Debtors may remedy any defect or omission or reconcile any inconsistency in this Plan in such a manner as may be necessary or appropriate to carry out the purpose and intent of this Plan, without further notice to or order of the Bankruptcy Court. A holder of a Claim that has accepted this Plan shall be deemed to have accepted this Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such holder.

**11.3 Revocation or Withdrawal of Plan.** The Plan Proponents reserve the right to revoke or withdraw this Plan prior to the Effective Date and/or to file subsequent chapter 11 plans.

**11.4 Service of Documents.** Any notice, direction or other communication given regarding the matters contemplated by this Plan (each, a “**Notice**”) must be in writing, sent by personal delivery, electronic mail, courier or facsimile and addressed as follows:

Activa Resources, LLC  
Tiva Resources, LLC  
403 E Commerce St., Suite 220  
San Antonio, TX 78205

with copies to:

Loeb & Loeb LLP  
10100 Santa Monica Blvd., Ste. 2200  
Los Angeles, CA 90067  
Telephone: (310) 282-2000  
Fax: (310) 734-1686  
E-Mail: bgiven@loeb.com  
Attention: Bernard R. Given II, Esq.

A Notice is deemed to be given and received: (a) if sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 5:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (b) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile, or (c) if sent by electronic mail, when the sender receives an email from the recipient acknowledging receipt, provided that an automatic “read receipt” does not constitute acknowledgment of an email for purposes of this Section. Any party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any element of a party’s address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a party’s legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a party.

**11.5 Exemption from Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code.** Pursuant to section 1146(a) of the Bankruptcy Code, any issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer of property, pursuant to or in connection with this Plan shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States or by any other Governmental Unit, and the Confirmation Order shall direct the appropriate federal, state or local (domestic or foreign) governmental officials or agents to forgo the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents evidencing such action or event without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of, transactions contemplated by and the Distributions to be made under this Plan.

**11.6 Votes Solicited in Good Faith.** Upon entry of the Confirmation Order, the Plan Proponents 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 Plan

Proponents and 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 or the Reorganized Debtors 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, if any.

**11.7 Closing of Chapter 11 Cases.** The Reorganized Debtors shall file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases as soon as reasonably practical.

**11.8 Conflicts.** Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement, the Plan Documents, or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control.

**11.9 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.

Date: November 16, 2022

ACTIVA RESOURCES, LLC AND  
TIVA RESOURCES, LLC

By: /s/ John Hayes  
John Hayes, President  
Debtors and Plan Proponents

LOEB & LOEB LLP

By: /s/ Bernard R. Given II  
Bernard R. Given II  
Attorneys for Debtors

**EXHIBIT A**  
**DEFINITIONS**

As used in the Debtors' Plan of Reorganization, the following terms shall have the following meanings and, as the context requires, the singular shall include the plural:

**"Activa"** means Activa Resources, LLC, a Texas limited liability company and a Chapter 11 Debtor.

**"Activa Class A Interest"** means all Class A Unit equity securities, within the meaning of Bankruptcy Code section 101(16), issued by Activa and outstanding prior to the Effective Date, including, without limitation, any Class A Unit membership interests of Activa, together with any warrants, conversion rights, rights of first refusal, subscriptions, commitments, agreements, or other rights to acquire or receive any equity ownership interests in Activa as a result of ownership of any Class A Units prior to the Effective Date.

**"Activa Class B Interest"** means all Class B Unit equity securities, within the meaning of Bankruptcy Code section 101(16), issued by Activa and outstanding prior to the Effective Date, including, without limitation, any Class B Unit membership interests of Activa, together with any warrants, conversion rights, rights of first refusal, subscriptions, commitments, agreements, or other rights to acquire or receive any equity ownership interests in Activa as a result of ownership of any Class B Units prior to the Effective Date.

**"Administrative Claim"** means an obligation of the Debtors under Bankruptcy Code section 503(b) entitled to priority in payment under Bankruptcy Code section 507(a), including but not limited to: (a) the actual and necessary costs and expenses incurred after the Petition Date for preserving the Estates and/or operating the Debtors' business; (b) cure costs associated with the assumption or assumption and assignment of executory contracts and unexpired leases pursuant to Bankruptcy Code section 365 (other than to the extent assumed by a third party under an asset purchase agreement and sale approved by the Bankruptcy Court); and (c) all Statutory Fees. As used herein, the term "Administrative Claim" shall exclude Fee Claims.

**"Administrative Claims Bar Date"** means the first Business Day that is at least sixty (60) days after the Effective Date or such other date ordered by the Bankruptcy Court.

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

**"Allowed Claim"** means a Claim that is not a Disputed Claim or a Disallowed Claim and (a) for which a Proof of Claim has been timely filed by the applicable Claims Bar Date and as to which no objection to allowance thereof has been timely interposed within the applicable period of time fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules or order of the Bankruptcy Court; (b) that has been listed by the Debtors in their Schedules as liquidated in a specified amount and is not Disputed or contingent and for which no contrary Proof of Claim has been timely filed; or (c) that is expressly Allowed pursuant to the terms of this Plan or a Final Order of the Bankruptcy Court. The term "Allowed Claim" shall not, for purposes of computing Distributions under this Plan, include interest on such Claim from and after the Petition Date, except as provided in sections 506(b) or 511 of the Bankruptcy Code or as otherwise expressly set forth in this Plan or a Final Order of the Bankruptcy Court.

**“Allowed Administrative Claim”** means an Administrative Claim to the extent that it is an Allowed Claim.

**“Allowed Fee Claim”** means a Fee Claim to the extent that it is an Allowed Claim.

**“Allowed General Unsecured Claim”** means a General Unsecured Claim to the extent that it is an Allowed Claim.

**“Allowed Other Secured Claim”** means an Other Secured Claim to the extent that it is an Allowed Claim.

**“Allowed Priority Non-Tax Claim”** means a Priority Non-Tax Claim to the extent that it is an Allowed Claim.

**“Allowed Priority Tax Claim”** means a Priority Tax Claim to the extent that it is an Allowed Claim.

**“Allowed Secured Cargill Claim”** means a Secured Cargill Claim to the extent that it is an Allowed Claim.

**“Allowed Secured Texas Capital Bank Claim”** has the meaning set forth in section 3.5.2(a).

**“Allowed Secured Priority Tax Claim”** means a Secured Priority Tax Claim to the extent that it is an Allowed Claim.

**“Assets”** means (a) all assets and properties of every kind, nature, character and description (whether real, personal, or mixed, whether tangible and intangible, including contract rights, wherever situated and by whomever possessed), including the goodwill related thereto, operated, owned or leased by the Debtors as of the Effective Date and that constitute property of the Estates within the purview of Bankruptcy Code section 541, including, without limitation, any and all Claims, Causes of Action, Avoidance Actions and rights of the Debtors under federal, state, or foreign law, letters of credit issued for the benefit of the Debtors and the monies deposited to secure the performance of any contract or lease by the Debtors; and (b) the proceeds, products, rents and profits of any of the foregoing.

**“Avoidance Actions”** means any claims, rights, defenses, or other Causes of Action arising under Chapter 5 of the Bankruptcy Code, including, without limitation, under Bankruptcy Code sections 502, 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551 or 553, or under similar or related state or federal statutes and common law, including state fraudulent transfer laws, whether or not prosecution of such actions has commenced as of the Confirmation Date or the Effective Date, and whether or not standing to bring such claims is held by any representative of the Estates, any party-in-interest, or any other Entity or Person.

**“Bankruptcy Code”** means title 11 of the United States Code, 11 U.S.C. §§ 101 et. seq., and as such title has been, or may be, amended from time to time, to the extent that any such amendment is applicable to the Chapter 11 Cases.

**“Bankruptcy Court”** means the United States Bankruptcy Court for the Western District of Texas, San Antonio Division, or such other court having jurisdiction over the Chapter 11 Cases or any proceeding within, or appeal of an order entered in the Chapter 11 Cases.

**“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure, and as such rules have been, or may be, amended from time to time, to the extent that any such amendment is applicable to the Chapter 11 Cases.

**“Bar Date”** means, as applicable, (a) the Administrative Claims Bar Date, (b) the General Bar Date, and/or (c) any Rejection Bar Date.

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

**“Cargill Claim”** means that certain claim asserted by Cargill, Inc. pursuant to Claim No. 31 as maintained by the Claims and Noticing Agent.

**“Cargill Collateral”** means the collateral securing the Cargill Claim.

**“Cash”** means money that is legal tender of the United States of America or the indubitable equivalent thereof.

**“Causes of Action”** means any and all claims, rights, demands, actions, suits, obligations, liabilities, defenses, offsets, setoffs, recoupments, actions in law or equity or otherwise, causes of action, choses in action, suits, damages, rights to legal or equitable remedies, judgments, third-party claims, counterclaims and cross-claims against any Entity or Person, in each case whether known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in contract, in tort, in law or in equity, or pursuant to any other theory of law, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise, whether arising under the Bankruptcy Code or federal, state, common, or other law, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Cases, including through the Effective Date.

**“Chapter 11 Cases”** means the jointly administered Chapter 11 cases of the Debtors pending before the Bankruptcy Court and bearing case numbers 22-50117 and 22-50118.

**“Company Agreement Amendments”** means amendments to the Debtors’ operating agreements in the form filed with the Plan Supplement.

**“Claim”** has the meaning ascribed to such term in Bankruptcy Code section 101(5). As used herein, the term may include an Administrative Claim and a Fee Claim.

**“Claims and Noticing Agent”** means Donlin Recano & Co., the Debtors’ Claims, Noticing and Solicitation Agent, as approved by the Bankruptcy Court pursuant to Docket No. 80.



**“Claims Objection Deadline”** means with respect to any applicable Proof of Claim, the latest of (a) one hundred eighty (180) days after the Effective Date; (b) ninety (90) days after the filing of such Proof of Claim, or (c) such other date as may be specifically fixed by Final Order of the Bankruptcy Court for objecting to Claims.

**“Class”** means a category of holders of Claims or interests, as described in Article III of this Plan.

**“Confirmation”** means confirmation of the Plan pursuant to Bankruptcy Code section 1129.

**“Confirmation Date”** means the date upon which the Confirmation Order is entered on the docket maintained by the Bankruptcy Court pursuant to Bankruptcy Rule 5003.

**“Confirmation Hearing”** means the hearing before the Bankruptcy Court at which the Plan is confirmed.

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

**“Debtors”** means Activa and Tiva, as debtors and debtors-in-possession in the Chapter 11 Cases.

**“Deficiency Claim”** means with respect to any Claim secured by a Lien in any Assets having a value of less than the amount of such Claim (after taking into account other Liens of higher priority in such property), the portion of such Claim equal to the difference between (a) the allowed amount of the Claim and (b) the allowed amount of the secured portion of such Claim (which allowed secured amount may be set pursuant to this Plan).

**“DIP Claims”** means all Claims of the Citrus Holdings, LLC relating to that certain loan made to the Debtors in the original principal amount of Four Hundred Fifty Thousand and No/100 Dollars (\$450,000.00) pursuant to the terms of that certain Debtor-in-Possession Loan and Security Agreement, entered into as of March 7, 2022, and approved pursuant to the final order entered by the Bankruptcy Court at Docket No. 141.

**“Disallowed Claim”** means a Claim, or any portion thereof, that (a) has been disallowed by a Final Order, or (b) (i) is Scheduled at zero, in an unknown amount or as contingent, Disputed or unliquidated and (ii) as to which the Bar Date has been established but no Proof of Claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

**“Disclosure Statement”** means the written disclosure statement that relates to the Plan, including all exhibits, appendices, schedules and annexes attached thereto, as it may be altered, amended, supplemented or modified from time to time, and that is prepared, approved and distributed in accordance with Bankruptcy Code section 1125 and Bankruptcy Rule 3018.

**“Disputed”** means with respect to any Claim, other than a Claim that has been Allowed pursuant to the Plan or a Final Order, a Claim (i) as to which no Request for Payment or Proof of Claim has been filed by the applicable Bar Date and which is listed in the Schedules as unliquidated, contingent, or Disputed; (ii) as to which a Request for Payment or Proof of Claim has been filed by the applicable Bar Date and as to which an objection or request for estimation has been filed by the applicable Claims Objection Deadline, or which is otherwise Disputed in accordance with applicable law and this Plan, which objection, request for estimation, or dispute has not been withdrawn or determined by a Final Order; (iii) as to which a Request for Payment or Proof of Claim was required to be filed by the Bar Date, but as to which a Request for Payment or Proof of Claim was not timely or properly filed in accordance with the provisions of the Notice of Commencement and Official Form 410; or (iv) if not otherwise Allowed, as to which the applicable Claims Objection Deadline has not expired.

**“Disputed Claim”** means any Claim, or any portion thereof, that is not a Disallowed Claim, that has not been Allowed pursuant to this Plan or a Final Order of the Bankruptcy Court, and

(a) if a Proof of Claim has been timely filed by the applicable Bar Date, such Claim is designated on such Proof of Claim as unliquidated, contingent or Disputed, or in zero or unknown amount, and has not been resolved by written agreement of the parties or a Final Order of the Bankruptcy Court; or

(b) if either (1) a Proof of Claim has been timely filed by the applicable Bar Date or (2) a Claim has been listed on the Schedules as other than unliquidated, contingent or Disputed, or in zero or unknown amount, a Claim (i) as to which Debtors, Reorganized Debtors, or a Plan Proponent have timely filed an objection or request for estimation in accordance with this Plan, the Bankruptcy Code, the Bankruptcy Rules, and any orders of the Bankruptcy Court or for which such time period to object or file a request for estimation has not yet expired as of the applicable date of determination or (ii) which is otherwise Disputed by Debtors, Reorganized Debtors or a Plan Proponent in accordance with applicable law, in each case which objection, request for estimation or dispute has not been withdrawn, overruled or determined by a Final Order; or

(c) that is the subject of an objection or request for estimation filed in the Bankruptcy Court and which such objection or request for estimation has not been withdrawn, resolved or overruled by Final Order of the Bankruptcy Court; or

(d) that is otherwise Disputed by Debtors, or Reorganized Debtors in accordance with the provisions of this Plan or applicable law, which dispute has not been withdrawn, resolved or overruled by Final Order.

**“Disputed Claims Reserve(s)”** shall have the meaning ascribed to such term in Section 6.4 of the Plan.

**“Distribution”** means any payment of Cash to be made under the Plan to holders of Allowed Claims.

**“Distribution Address”** means: (a) the address indicated on any applicable Proof of Claim or Request for Payment properly filed by an Entity or Person, or its/his authorized agent, prior to the applicable Bar Date; (b) if no Proof of Claim or other Request for Payment has been filed, the address set forth in the Schedules; or (c) to the extent a Claim has been transferred, the address in the notice filed with the Bankruptcy Court in accordance with Bankruptcy Rule 3001(e) on or before the Effective Date and in accordance with Section 7.3 of the Plan; provided, however, that any Entity or Person may, after the Effective Date, select an alternative Distribution Address by filing a notice with the Bankruptcy Court (with a copy served on the Reorganized Debtors) identifying such alternative Distribution Address.

**“Distribution Date(s)”** means the date or dates on which a Distribution is required to be made under the Plan.

**“Distribution Reserve”** means (i) the Disputed Claims Reserve and (ii) the Unclaimed Distributions.

**“EBITDAX”** means, for any period, the pre-tax net income of the Reorganized Debtors on a consolidated basis for such period plus (without duplication and only to the extent deducted in determining such net income) interest expense of the Reorganized Debtors on a consolidated basis for such period, intangible and tangible drilling and workover expenses and other development expenses deducted in determining the pre-tax net income under successful efforts accounting, depreciation, non-cash amortization, depletion, write-down of Oil and Gas Properties and other non-cash losses and expenses of the Reorganized Debtors on a consolidated basis for such period, less gains on sales of assets and other non-cash income for such period included in the determination of net income of the Reorganized Debtors on a consolidated basis.

**“Effective Date”** means: (a) if no stay of the Confirmation Order is in effect, the first Business Day after the date on which all of the conditions set forth in Article VIII of the Plan have been satisfied or waived in accordance with that Article, or such later date as may be reasonably agreed to by the Plan Proponents; or (b) if a stay of the Confirmation Order is in effect, on the first Business Day after the later of: (i) the date such stay is vacated; and (ii) the date each condition set forth in the Plan has been satisfied or waived as set forth in the Plan.

**“Entity”** has the meaning ascribed to such term in Bankruptcy Code section 101(15).

**“Estates”** means the Chapter 11 estates of each of the Debtors created by Bankruptcy Code section 541.

**“Estimation Order”** means a Final Order, which may be the Confirmation Order, estimating for voting, Distribution or any other proper purposes under the Bankruptcy Code the aggregate (and if applicable, individual) amount of any Claims, whether classified or unclassified under this Plan.

**“Face Amount”** means (a) when used in reference to a Disputed Claim, the full stated amount of the Claim asserted by the applicable holder in any Proof of Claim timely filed with the Bankruptcy Court (or such lesser estimated amount approved by order of the Bankruptcy Court), and (b) when used in reference to an Allowed Claim, the Allowed amount of such Claim.

**“Fee Claim”** means a Claim: (a) of a Professional person retained by order of the Bankruptcy Court for compensation and/or reimbursement of expenses pursuant to Bankruptcy Code sections 327, 328, 330, or 331 (other than ordinary course professionals of the Debtor); and (b) of any professional or other party-in-interest seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases, pursuant to Bankruptcy Code section 503(b).

**“Fee Claims Bar Date”** means the date that is the first Business Day after the date that is sixty (60) days after the Effective Date unless extended by order of the Bankruptcy Court.

**“Final Cash Collateral Order”** means that certain *Final Order (I) Authorizing the Debtor to Use Cash Collateral; (II) Granting Adequate Protection, and (III) Granting Related Relief*.

**“Final Fee Applications”** means all final applications seeking payment of Fee Claims.

**“Final Order”** means an order or judgment of the Bankruptcy Court (or other court with jurisdiction), as entered on the docket of the Bankruptcy Court (or other court with jurisdiction), that has not been reversed, stayed, modified or amended, and as to which: (a) the time to appeal or seek review has expired and no timely filed appeal or petition for review, rehearing, remand or certiorari is pending; or (b) any appeal taken or petition for review, rehearing, remand or certiorari filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought; provided, however, that the possibility that a motion under Bankruptcy Code section 502(j), Bankruptcy Rules 9023 and 9024, or any other rules or law governing procedure in cases before the Bankruptcy Court, may be filed with respect to such order shall not cause such order not to be a Final Order.

**“Funded Debt”** means: (i) all obligations of the Reorganized Debtors for money borrowed, including (a) the obligations of the Reorganized Debtors for money borrowed by a partnership of which the Reorganized Debtors is a general partner, (b) obligations, whether or not assumed, which are secured in whole or in part by the Property of the Reorganized Debtors or payable out of the proceeds or production from Property of the Reorganized Debtors, and (c) any obligations of the Reorganized Debtors in respect of letters of credit and repurchase agreements; (ii) all obligations of the Reorganized Debtors evidenced by notes, debentures, bonds or similar instruments; (iii) all obligations of the Reorganized Debtors to pay the deferred purchase price of property or services (except trade accounts arising in the ordinary course of business if interest is not paid or accrued thereon); and (iv) all capitalized lease obligations of the Reorganized Debtors.

**“General Bar Date”** means June 13, 2022.

**“General Unsecured Claim”** means a Claim (including any Deficiency Claim) that is not an Administrative Claim, a Fee Claim, a Priority Tax Claim, a Priority Non-Tax Claim, a Secured Priority Tax Claim, a Secured Cargill Claim, a Secured Texas Capital Bank Claim, an Other Secured Claim, an Operator Claim, or a Suspense Claim, whether Allowed or Disputed. To the extent applicable, the limitations imposed by section 502 of the Bankruptcy Code shall apply to the relevant General Unsecured Claim, including, without limitation, subsection 502(b)(6) and subsection 502(b)(7) thereof.

**“Impaired”** has the meaning ascribed to such term in Bankruptcy Code section 1124.

**“Incentive Interests”** means all Incentive Unit equity securities, within the meaning of Bankruptcy Code section 101(16), issued by Activa and outstanding prior to the Effective Date, including, without limitation, any Incentive Unit membership interests of Activa, together with any warrants, conversion rights, rights of first refusal, subscriptions, commitments, agreements, or other rights to acquire or receive any equity ownership interests in Activa as a result of ownership of any Incentive Units prior to the Effective Date.

**“Investment Banker”** means Red Oaks Energy Advisors or if Red Oaks Energy Advisors is unable or unwilling to assist with the Post-Confirmation Sale, such other comparable firm that shall be selected by the Reorganized Debtors, in consultation with Texas Capital Bank, Cargill and the New Credit Facility Lender, to assist with the Post-Confirmation Sale, consistent with the terms and timeline set forth in section 4.5.

**“IRS”** means the Internal Revenue Service.

**“Lien”** shall have the meaning ascribed to such term in Bankruptcy Code section 101(37).

**“Local Rules”** means the Local Court Rules of the United States Bankruptcy Court for the Western District of Texas.

**“New Credit Facility”** means a senior secured asset-based loan facility in the principal amount of \$4.87 million, inclusive of the amount of the DIP Claims.

**“New Credit Facility Collateral”** means the collateral securing repayment of the New Credit Facility.

**“New Credit Facility Documents”** means all agreements, documents, and instruments delivered or entered into in connection with the New Credit Facility.

**“New Credit Facility Lender”** means Citrus Holdings, LLC, as the lender of the New Credit Facility.

**“New TCB Credit Documents”** means that certain (1) Amended and Restated Credit Agreement, entered into as of the Effective Date between Texas Capital Bank and the Reorganized Debtors, and (2) Credit Agreement, entered into as of the Effective Date, between Cargill and the Reorganized Debtors, copies of which shall be filed with the Plan Supplement.

**“Notice of Commencement”** means the Notice of Chapter 11 Bankruptcy Case approved by the Bankruptcy Court at Docket No. 38.

**“Oil and Gas Properties”** means fee, leasehold, or other interests in or under mineral estates or oil, gas, and other liquid or gaseous hydrocarbon leases with respect to properties situated in the United States or offshore from any State of the United States, including overriding royalty and royalty interests, leasehold estate interests, net profits interests, production payment interests, and mineral fee interests, together with contracts executed in connection therewith and

all tenements, hereditaments, appurtenances and properties appertaining, belonging, affixed, or incidental thereto.

**“Operator”** means an operator of oil and gas wells under oil and gas leases in which the Debtors own non-operator working interests.

**“Operator Claim”** shall mean claims held by an operator arising from its status as an Operator.

**“Other Secured Claim”** means a Secured Claim arising prior to the Petition Date against the Debtors, other than a Secured Priority Tax Claim, Secured Cargill Claim, or Secured Texas Capital Bank Claim and that is not subject to an Avoidance Action. For the avoidance of doubt, Other Secured Claim shall not include Operator Claims.

**“Person”** has the meaning ascribed to such term in Bankruptcy Code section 101(41).

**“Petition Date”** means February 3, 2022.

**“Plan”** means this First Amended Joint Plan of Reorganization, dated as of the date set forth on the signature page hereof, together with any amendments or modifications hereto as the Debtors may file hereafter in accordance with the terms of the Plan.

**“Plan Documents”** means, collectively, those documents in furtherance of consummation of the Plan and/or to be executed in order to consummate the transactions contemplated under the Plan, which may be filed by the Debtors with the Bankruptcy Court, including, without limitation, the documents in the Plan Supplement.

**“Plan Supplement”** means (1) the Company Agreement Amendments, (2) the New Credit Facility Documents, (3) the New TCB Credit Documents and (4) such other documents as may be necessary to effectuate the Plan, which shall be filed no later than fourteen (14) days prior to the deadline to vote to accept or reject the Plan.

**“Post-Confirmation Sale”** means that certain sale process of all of the Reorganized Debtors’ Assets, which shall be required if a Sale Trigger occurs.

**“Prime Rate”** means the prime rate as published in The Wall Street Journal’s Money Rates table on the first day of the month; provided, however, if the first day of the month falls on a Saturday, Sunday or day for which banks are authorized to be closed in the state of Texas, the prime rate shall be the most recent rate so published. If multiple prime rates are quoted in such table, then the highest prime rate quoted therein shall be the prime rate.

**“Priority Non-Tax Claim”** means a Claim or a portion of a Claim for which priority is asserted under Bankruptcy Code sections 507(a)(3), (4), (5), (6) or (7).

**“Priority Tax Claim”** means a Claim or a portion of a Claim for which priority is asserted under Bankruptcy Code section 507(a)(8).

**“Professional”** means a Person employed in the Debtors’ Chapter 11 Cases pursuant to a Final Order in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date, pursuant to sections 327, 328, 329, 330, 331 and 363 of the Bankruptcy Code.

**“Proof of Claim”** means a proof of claim filed with the Bankruptcy Court or with the Claims and Noticing Agent in connection with the Chapter 11 Cases.

**“Pruitt Project”** means all of Activa’s right, title and interest in wells, equipment, land, leases, data and agreements that make up the Pruitt Project, located in Atacosa County and Frio County, Texas, to include, without limitation, the Ruple 1H Well, Ruple 2H Well, all leasehold, geological, geophysical, engineering and other data associated with the project and the proceeds thereof.

**“Quarterly Net Cash Balance”** means the lesser of (1) the month end cash balance in the Reorganized Debtors’ bank accounts for the current month or (2) the average month end cash balance in the Reorganized Debtors’ bank accounts for the last 3 months, based on the Reorganized Debtors’ financial statements for the most recently ended quarter, less funds due to other parties in the next three months, including, for example, and without limitation, (1) funds being held in suspense, (2) funds required to be paid over to the New Credit Facility Lender under the New Credit Facility Documents, and (3) funds necessary for anticipated capital expenses such as authorizations for expenditures, cash calls, or pursuant to notification from Operators of upcoming capital expenditures.

**“Ratable, Ratably or Pro Rata”** means the proportion that the Allowed Claim in a particular Class bears to the aggregate amount of (a) Allowed Claims in such Class of the date of determination, plus (b) Disputed Claims (in their aggregate Face Amounts) in such Class as of the date of determination.

**“Rejection Bar Date”** means the date that is twenty-eight (28) days after entry of any order authorizing the rejection of an executory contract or unexpired lease.

**“Reorganized Debtors”** means Activa and Tiva as reorganized pursuant to this Plan on and after the Effective Date.

**“Reorganized Debtors’ Assets”** means all assets of the Debtors on the Effective Date.

**“Request for Payment”** means a request for payment of an Administrative Claim filed with the Bankruptcy Court in connection with the Chapter 11 Cases.

**“Sale Triggers”** has the meaning set forth in section 4.5.

**“Schedules”** means, collectively, the (a) schedules of assets, liabilities and executory contracts and (b) statements of financial affairs, as each may be amended and supplemented from time to time, filed by the Debtors pursuant to Bankruptcy Code section 521.

**“Secured Cargill Claim”** means a Cargill Claim to the extent that it is a Secured Claim.



**“Secured Claim”** means a Claim, net of surcharges pursuant to Bankruptcy Code § 506(c), (a) that is secured by a valid, perfected and enforceable Lien that is not subject to an Avoidance Action, in or upon any right, title or interest of the Debtor in and to property of the Estate, to the extent of the value of the holder’s interest in such property as of the relevant determination date or (b) that is subject to an offset right pursuant to Bankruptcy Code section 553, to the extent of the amount subject to a valid setoff as of the Effective Date; which Claim shall be in an amount, including post-petition interest and any reasonable fees, costs or charges to the extent permitted under Bankruptcy Code section 506(b), that is agreed to in writing by the holder and Reorganized Debtor or is determined by the Bankruptcy Court pursuant to Bankruptcy Code section 506(a).

**“Secured Priority Tax Claim”** means a Priority Tax Claim to the extent it is a Secured Claim.

**“Secured Texas Capital Bank Claim”** means a Texas Capital Bank Claim to the extent it is a Secured Claim.

**“Statutory Fees”** means the fees due and payable pursuant to section 1930 of title 28 of the United States Code.

**“Subordinated Claim”** means (a) any Claim asserted against the Debtors that is subordinated pursuant to either Bankruptcy Code section 510(b) or Bankruptcy Code section 510(c); or (b) any Claim for any fine, penalty, or forfeiture, or multiple, exemplary, or punitive damages, to the extent that such fine, penalty, forfeiture, or damage is not compensation for actual pecuniary loss suffered by the holder of such Claim, including, without limitation, any such Claim based upon, arising from, or relating to any Cause of Action whatsoever (including, without limitation, violation of law, willful intellectual property infringement, fraud, personal injury, or wrongful death, whether secured or unsecured, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising in law, equity or otherwise), and any such Claim asserted by a governmental unit in connection with a tax or other obligation owing to such unit.

**“Surety”** has the meaning set forth in Section 5.6 of this Plan.

**“Surety Bond Obligation”** has the meaning set forth in Section 5.6 of this Plan.

**“Surety Bond Program”** has the meaning set forth in Section 5.6 of this Plan.

**“Suspense Claim”** means claims held by royalty interest owners, overriding royalty interest owners and working interest owners in oil and gas leases operated by Activa prior to the Petition Date.

**“Tax Code”** means the United States Internal Revenue Code of 1986, as amended, modified or supplemented from time to time, and the rules and regulations promulgated thereunder.

**“Texas Capital Bank Claim”** means that certain claim asserted by Texas Capital Bank pursuant to Claim No. 36 as maintained by the Claims and Noticing Agent.

**“Texas Capital Collateral”** means the collateral securing the Texas Capital Bank Claim.

**“Tiva”** means Tiva Resources, LLC, a Texas limited liability company and a Chapter 11 Debtor.

**“Tiva Interest”** means any equity security, within the meaning of Bankruptcy Code section 101(16), issued by Tiva and outstanding prior to the Effective Date, including, without limitation, any membership interests of Tiva, together with any warrants, conversion rights, rights of first refusal, subscriptions, commitments, agreements, or other rights to acquire or receive any equity ownership interests in Tiva prior to the Effective Date

**“Unclaimed Distribution”** means any Cash or other distributable property unclaimed for a period of One Hundred Twenty (120) days after it has been delivered (or attempted to be delivered) in accordance with the Plan to the holder entitled thereto in respect of such holder’s Allowed Claim. Unclaimed Distribution shall, without limitation, include: (a) checks (and the funds represented thereby) mailed to a Distribution Address and returned as undeliverable without a proper forwarding address; (b) funds for uncashed checks; (c) checks (and the funds represented thereby) not mailed or delivered because no Distribution Address to mail or deliver such property was available, notwithstanding efforts by the Reorganized Debtors to locate such address which were commercially reasonable under the circumstances; and (d) checks (and the funds represented thereby) not mailed or delivered because a holder of a Claim or interest is requested to provide a taxpayer identification number or to otherwise satisfy any tax withholding requirements with respect to a Distribution and such holder fails to do so within one hundred twenty (120) days of the date of such request.

**“Unimpaired”** means, with respect to any Claim, that such Claim is not Impaired within the meaning of Bankruptcy Code section 1124.

**“Voting Record Date”** means the date the Bankruptcy Court enters an order approving the adequacy of the Disclosure Statement.

## **Exhibit B**

Activa Resources, LLC Ch. 11 Financial Model			For Settlement Purposes Only – Subject to FRE 408					Monthly Financials						
For Settlement Purposes Only – Subject to FRE 408			Annual Financials					2022						
Values in thousands			2022	2023	2024	2025	2026	2022	2022	2022	2022	2022	2022	2022
								Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22
Income Statement														
	OilNet(Mbbl)		70	105	140	160	168	4.6	5.2	5.7	5.7	6.4	5.8	6.5
	GasNet(MMcf)		83	211	481	564	553	2.4	3.9	6.5	7.5	7.6	7.2	9.9
	NGLNet(Mgal)		129	-	-	-	-	0.0	15.0	10.5	15.6	7.7	15.4	11.0
	Total Production (Mboe)		87	140	220	254	260	5.0	6.2	7.1	7.3	7.8	7.4	8.4
	Oil (\$/bbl)	Diff %									\$101.14	\$108.95	\$112.54	\$103.84
	Gas (\$/mcf)	Diff %									\$8.43	\$10.27	\$9.79	\$9.48
	Oil & GasRev. Net(M\$)		\$7,349	\$10,267	\$13,618	\$14,608	\$14,467	\$385	\$505	\$657	\$637	\$757	\$748	\$743
	Misc. Rev. Net(M\$)		65	104	91	80	72	\$7	\$6	\$7	\$7	\$5	\$6	\$4
	Hedging Gain / Loss		(0)	0	0	0	0	-	-	-	(\$0)	(\$0)	(\$0)	(\$0)
	Total Revenue		\$7,414	\$10,371	\$13,709	\$14,688	\$14,539	\$391	\$511	\$665	\$644	\$762	\$754	\$747
	CostsNet (M\$)		-	(\$1,322)	(\$1,444)	(\$1,580)	(\$1,686)							
	TaxesNet(M\$)		-	(757)	(1,004)	(1,077)	(1,066)							
	Total LOE		(\$2,123)	(\$2,079)	(\$2,448)	(\$2,656)	(\$2,752)	(\$126)	(\$108)	(\$150)	(\$137)	(\$147)	(\$169)	(\$259)
	Operating Cash Flow		\$5,292	\$8,292	\$11,262	\$12,032	\$11,787	\$265	\$402	\$515	\$507	\$616	\$585	\$488
	G&A		(2,096)	(1,781)	(1,932)	(2,096)	(2,274)	(196)	(118)	(219)	(196)	(157)	(172)	(197)
	EBITDAX	Includes \$400k in BK Expenses, Non-Recurring	\$3,196	\$6,511	\$9,329	\$9,935	\$9,513	\$69	\$284	\$296	\$311	\$458	\$412	\$291
	DD&A		(\$2,300)	(\$3,837)	(\$5,072)	(\$5,435)	(\$5,379)	(\$114)	(\$157)	(\$164)	(\$157)	(\$174)	(\$181)	(\$275)
	Interest Expense		(\$719)	(\$1,248)	(\$1,131)	(\$956)	(\$850)	(\$91)	(\$52)	(\$52)	(\$52)	(\$58)	(\$54)	(\$56)
	Net Income		\$176	\$1,426	\$3,126	\$3,545	\$3,283	(\$136)	\$76	\$80	\$102	\$226	\$178	(\$40)
	Check							(0)	(0)	-	(0)	(0)	(0)	(0)
Cash Flow														
180 day Avg	Net Income		\$176	\$1,426	\$3,126	\$3,545	\$3,283	(\$136)	\$76	\$80	\$102	\$226	\$178	(\$40)
	DD&A		2,378	3,837	5,072	5,435	5,379	120	160	167	160	177	185	315
	Change in NWC	Shift (mo)	(114)	(1,313)	51	(261)	345	176	64	(442)	(176)	175	(123)	(88)
	Operating Cash Flow		\$2,440	\$3,950	\$8,249	\$8,719	\$9,008	\$160	\$299	(\$195)	\$86	\$579	\$240	\$188
	Invest.Net(M\$)		(\$1,704)	(\$4,709)	(\$4,837)	(\$6,100)	(\$5,516)	(\$102)	(\$61)	(\$99)	(\$25)	(\$188)	(\$212)	(\$153)
	Investing Cash Flow		(\$1,704)	(\$4,709)	(\$4,837)	(\$6,100)	(\$5,516)	(\$102)	(\$61)	(\$99)	(\$25)	(\$188)	(\$212)	(\$153)
	Capital Infusion		-	-	-	-	-	-	-	-	-	-	-	-
	DIP Loan Draws (Pruitt)		1,220	1,325	575	-	-	-	-	330	-	-	80	40
	DIP Loan Draws (OSR)		1,750	-	-	-	-	-	-	-	-	-	-	-
	DIP Facility Payments (P&I)		(190)	(1,808)	(2,126)	(1,332)	(900)	-	-	-	-	(12)	(17)	(6)
	New Conforming Facility Refi		-	-	-	-	7,322	-	-	-	-	-	-	-
	New Conforming Facility Amort		-	-	-	-	(582)	-	-	-	-	-	-	-
	TCB Principal Payments		(91)	(150)	(1,794)	(1,794)	(7,028)	(91)	-	-	-	-	-	-
	TCP Paydown		-	-	-	-	-	-	-	-	-	-	-	-
	Pre-BK AP		(239)	(437)	(74)	-	-	-	-	-	-	-	-	-
	Pre-BK Suspense Funds		(8)	(101)	(92)	-	-	-	-	-	-	-	-	-
	Cargill		-	(16)	(195)	(195)	(764)	-	-	-	-	-	-	-
	Cargill Paydown		-	-	-	-	-	-	-	-	-	-	-	-
	Financing Cash Flow		\$2,442	(\$1,186)	(\$3,707)	(\$3,321)	(\$1,951)	(\$91)	-	\$330	-	(\$12)	\$63	\$34
	Starting Cash		\$810	\$3,987	\$2,042	\$1,747	\$1,046	\$810	\$776	\$1,015	\$1,050	\$1,111	\$1,490	\$1,581
	Change in Cash		3,177	(1,945)	(295)	(702)	1,541	(33)	238	35	61	379	91	69
	Ending Cash		\$3,987	\$2,042	\$1,747	\$1,046	\$2,587	\$776	\$1,015	\$1,050	\$1,111	\$1,490	\$1,581	\$1,651
	Check							(0)	(0)	(0)	(0)	(0)	(0)	(0)
	TCB Facility:													
	Beginning Balance			\$10,766	\$10,616	\$8,822	\$7,028	\$10,200	\$10,200	\$10,200	\$10,200	\$10,766	\$10,766	\$10,766
	Paydown			(150)	(1,794)	(1,794)	(7,028)	-	-	-	-	-	-	-
	Ending Balance		\$10,766	\$10,616	\$8,822	\$7,028	(\$0)	\$10,200	\$10,200	\$10,200	\$10,200	\$10,766	\$10,766	\$10,766
	Cargill:													
	Beginning Balance		\$920	\$1,170	\$1,154	\$959	\$764						\$1,170	\$1,170
	Paydown			(16)	(195)	(195)	(764)						-	-
	Ending Balance		\$1,170	\$1,154	\$959	\$764	-	\$920	\$1,048	\$1,048	\$1,048	\$1,170	\$1,170	\$1,170
	New Conforming Facility													
	Beginning Balance		-	-	-	-	\$7,322	-	-	-	-	-	-	-
	Paydown		-	-	-	-	(582)	-	-	-	-	-	-	-
	Ending Balance		-	-	-	-	\$6,740	-	-	-	-	-	-	-
	Interest:													
	TCB		88	1,126	1,020	862	394							
	Cargill		10	122	111	94	43							
	New Conforming Facility		-	-	-	-	413	-	0	-	-	-	-	-
	Total		\$719	\$1,248	\$1,131	\$956	\$850	\$91	\$52	\$52	\$52	\$58	\$54	\$56
	Prime Rate							3.25%	3.25%	3.50%	3.50%	4.00%	4.75%	5.50%
	DIP Loan Facility:	on/off												
	OSR PUD1 CF	1										-	-	-
	OSR PUD1 Invest											-	-	-
	OSR PUD2 CF	0										-	-	-
	OSR PUD2 Invest											-	-	-
	OSR PUD3 CF	0										-	-	-
	OSR PUD3 Invest											-	-	-
	Ruple Farms 1H	1										-	\$6	(\$1)
	Pruitt PUD 2 Invest											-	-	-
	Pruitt PUD 2 CF	1	Investments	Inv. Date	Gross	Net						-	-	\$71
	Pruitt PUD 2 Invest		Ruple 2H	Mar-22	2,870	330				\$23		-	-	-
	Pruitt PUD 3 CF	1	Pruitt SWD	Jun-22	696	80						-	-	-
	Pruitt PUD 3 Invest		Pruitt Land 1	Jul-22	348	40						-	-	-
	Pruitt PUD 4 CF	1	Pruitt 3H	Dec-22	3,348	385						-	-	-
	Pruitt PUD 4 Invest		Pruitt 4H	Dec-22	3,348	385						-	-	-
	Pruitt PUD 5 CF	1	OSR 86-3H	Dec-22	6,500	1,750						-	-	-
	Pruitt PUD 5 Invest		Pruitt Land 2	Feb-23	761	88						-	-	-
	Pruitt PUD 6 CF	1	Pruitt Land 3	Mar-23	761	88						-	-	-
	Pruitt PUD 6 Invest		Pruitt 5H	Apr-23	2,500	288						-	-	-
	Pruitt PUD 7 CF	1	Pruitt 6H	Apr-23	2,500	288						-	-	-
	Pruitt PUD 7 Invest		Pruitt 7H	Oct-23	2,500	288						-	-	-
	Pruitt PUD 8 CF	1	Pruitt 8H	Oct-23	2,500	288						-	-	-
	Pruitt PUD 8 Invest		Pruitt 9H	Apr-24	2,500	288						-	-	-
	Pruitt PUD 9 CF	1	Pruitt 10H	Apr-24	2,500	288						-	-	-
	Pruitt PUD 9 Invest											-	-	-
	Pruitt PUD 10 CF	1										-	-	-
	Pruitt PUD 10 Invest											-	-	-
	Payment - 80% Sweep		190	1,808	2,126	1,332	541			-	-	\$12	\$17	\$6
	Extra Payment (or Refi)		-	-	-	-	359							
	DrillCo Facility Interest		67	446	349	168	34			\$3	\$3	\$3	\$4	\$4
	Cumulative Paid (Less Interest)		145	1,343	3,127	4,348	5,277			-	(\$3)	(\$5)	\$4	\$17
	Remaining Principal (w/ FinChg) to		3,090	3,217	2,008	787	-			\$370	\$373	\$375	\$446	\$473
	Additional Fees, Finance Charge, PI		265	-	-	-	-			\$40				







Activa Resources, LLC Ch. 11 Financial Model  
For Settlement Purposes Only – Subject to FRE 408

Values in thousands

			2025	2025	2025	2025	2025	2025	2025	2025	2025	2026	2026	2026	2026	2026	2026
			Apr-25	May-25	Jun-25	Jul-25	Aug-25	Sep-25	Oct-25	Nov-25	Dec-25	Jan-26	Feb-26	Mar-26	Apr-26	May-26	Jun-26
Income Statement																	
OilNet(Mbbl)			12.5	12.1	13.9	13.3	13.3	14.5	14.0	12.8	15.4	14.4	12.3	15.3	13.7	13.3	14.9
GasNet(MMcf)			39.9	40.9	40.4	41.3	56.8	55.8	57.2	54.9	57.5	57.0	51.1	56.5	50.8	49.3	46.1
NGLNet(Mgal)			0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Production (Mboe)			19.1	18.9	20.6	20.2	22.8	23.8	23.5	22.0	25.0	23.9	20.9	24.7	22.2	21.5	22.6
Oil (\$/bbl)			Diff %	99%													
Gas (\$/mcf)			Diff %	127%													
Oil & GasRev. Net(M\$)			\$1,111	\$1,085	\$1,206	\$1,169	\$1,248	\$1,322	\$1,294	\$1,210	\$1,429	\$1,361	\$1,169	\$1,380	\$1,199	\$1,158	\$1,251
Misc. Rev. Net(M\$)			\$7	\$7	\$7	\$7	\$7	\$6	\$7	\$6	\$6	\$6	\$6	\$6	\$6	\$6	\$6
Hedging Gain / Loss			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue			\$1,118	\$1,092	\$1,213	\$1,176	\$1,255	\$1,328	\$1,301	\$1,216	\$1,436	\$1,368	\$1,175	\$1,387	\$1,205	\$1,165	\$1,256
CostsNet (M\$)			(128)	(128)	(132)	(132)	(133)	(135)	(135)	(134)	(139)	(137)	(133)	(140)	(137)	(138)	(142)
TaxesNet(M\$)			(\$82)	(\$80)	(\$89)	(\$86)	(\$92)	(\$97)	(\$95)	(\$89)	(\$105)	(\$100)	(\$86)	(\$102)	(\$88)	(\$85)	(\$92)
Total LOE			(\$210)	(\$208)	(\$221)	(\$219)	(\$225)	(\$233)	(\$231)	(\$223)	(\$244)	(\$237)	(\$220)	(\$242)	(\$226)	(\$223)	(\$235)
Operating Cash Flow			\$909	\$884	\$992	\$957	\$1,030	\$1,095	\$1,070	\$993	\$1,192	\$1,130	\$955	\$1,145	\$980	\$942	\$1,022
G&A			(164)	(164)	(164)	(164)	(164)	(164)	(164)	(164)	(292)	(178)	(178)	(178)	(178)	(178)	(178)
EBITDAX			\$745	\$720	\$828	\$793	\$866	\$931	\$906	\$829	\$900	\$952	\$777	\$967	\$802	\$764	\$844
			Includes \$400k in BK Expenses, Non-Recurring														
DD&A			(\$414)	(\$404)	(\$449)	(\$435)	(\$464)	(\$491)	(\$481)	(\$450)	(\$531)	(\$506)	(\$435)	(\$513)	(\$446)	(\$431)	(\$465)
Interest Expense			(\$81)	(\$79)	(\$78)	(\$76)	(\$75)	(\$73)	(\$72)	(\$87)	(\$85)	(\$84)	(\$82)	(\$80)	(\$78)	(\$76)	(\$99)
Net Income			\$250	\$237	\$301	\$282	\$327	\$367	\$353	\$292	\$283	\$363	\$261	\$374	\$278	\$256	\$280
Check																	

Cash Flow																	
180 day Avg																	
Net Income			\$250	\$237	\$301	\$282	\$327	\$367	\$353	\$292	\$283	\$363	\$261	\$374	\$278	\$256	\$280
DD&A			414	404	449	435	464	491	481	450	531	506	435	513	446	431	465
Change in NWC			Shift (mo)	-2	(59)	160	(83)	(73)	(38)	(138)	(40)	102	(122)	(137)	236	(15)	(25)
Operating Cash Flow			\$605	\$801	\$667	\$644	\$753	\$720	\$794	\$844	\$693	\$732	\$932	\$873	\$699	\$891	\$703
Invest. Net(M\$)			(1,061)	(433)	(470)	(963)	(415)	-	(1,061)	(433)	-	(849)	(415)	-	(1,061)	(433)	-
Investing Cash Flow			(\$1,061)	(\$433)	(\$470)	(\$963)	(\$415)	-	(\$1,061)	(\$433)	-	(\$849)	(\$415)	-	(\$1,061)	(\$433)	-
Capital Infusion			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Loan Draws (Pruitt)			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Loan Draws (OSR)			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Facility Payments (P&I)			(113)	(119)	(109)	(108)	(100)	(99)	(94)	(87)	(87)	(81)	(81)	(78)	(67)	(73)	(427)
New Conforming Facility Refi			-	-	-	-	-	-	-	-	-	-	-	-	-	-	7,322
New Conforming Facility Amort			-	-	-	-	-	-	-	-	-	-	-	-	-	-	(95)
TCB Principal Payments			(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(6,280)
TCP Paydown			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pre-BK AP			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pre-BK Suspense Funds			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cargill			(16)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(683)
Cargill Paydown			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Financing Cash Flow			(\$278)	(\$285)	(\$275)	(\$274)	(\$265)	(\$264)	(\$260)	(\$253)	(\$253)	(\$247)	(\$247)	(\$244)	(\$233)	(\$238)	(\$68)
Starting Cash			\$1,769	\$1,035	\$1,118	\$1,040	\$447	\$520	\$975	\$448	\$606	\$1,046	\$681	\$952	\$1,581	\$986	\$1,205
Change in Cash			(734)	83	(78)	(593)	73	455	(527)	158	440	(364)	270	629	(595)	219	636
Ending Cash			\$1,035	\$1,118	\$1,040	\$447	\$520	\$975	\$448	\$606	\$1,046	\$681	\$952	\$1,581	\$986	\$1,205	\$1,840

Check

TCB Facility:

Beginning Balance	\$8,373	\$8,224	\$8,074	\$7,925	\$7,775	\$7,626	\$7,476	\$7,327	\$7,177	\$7,028	\$6,878	\$6,729	\$6,579	\$6,429	\$6,280	-
Paydown	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(6,280)	-
Ending Balance	\$8,224	\$8,074	\$7,925	\$7,775	\$7,626	\$7,476	\$7,327	\$7,177	\$7,028	\$6,878	\$6,729	\$6,579	\$6,429	\$6,280	-	-

Cargill:

Beginning Balance	\$910	\$894	\$878	\$862	\$845	\$829	\$813	\$797	\$780	\$764	\$748	\$732	\$715	\$699	\$683	-
Paydown	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(683)	-
Ending Balance	\$894	\$878	\$862	\$845	\$829	\$813	\$797	\$780	\$764	\$748	\$732	\$715	\$699	\$683	-	-

New Conforming Facility

Beginning Balance	-	-	-	-	-	-	-	-	-	-	-	-	-	-	\$7,322	\$7,322
Paydown	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(95)
Ending Balance	-	-	-	-	-	-	-	-	-	-	-	-	-	-	\$7,322	\$7,227

Interest:

TCB	\$73	\$71	\$70	\$69	\$67	\$66	\$65	\$79	\$77	\$75	\$74	\$72	\$70	\$69	\$34	-
Cargill	\$8	\$8	\$8	\$7	\$7	\$7	\$7	\$9	\$8	\$8	\$8	\$8	\$8	\$7	\$4	-
New Conforming Facility	-	-	-	-	-	-	-	-	-	-	-	-	-	-	\$61	\$61
Total	\$81	\$79	\$78	\$76	\$75	\$73	\$72	\$87	\$85	\$84	\$82	\$80	\$78	\$76	\$99	\$61

Prime Rate	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
------------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------

DIP Loan Facility:

OSR PUD1 CF	1	\$29	\$31	\$28	\$28	\$26	\$26	\$25	\$23	\$23	\$22	\$22	\$22	\$19	\$20	\$19	\$19
OSR PUD1 Invest		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
OSR PUD2 CF	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
OSR PUD2 Invest		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
OSR PUD3 CF	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
OSR PUD3 Invest		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ruple Farms 1H	1	\$3	\$3	\$3	\$3	\$3	\$3	\$3	\$3	\$3	\$3	\$3	\$3	\$2	\$2	\$2	\$2
Pruitt PUD 2 Invest		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pruitt PUD 2 CF	1	\$6	\$7	\$6	\$6	\$6	\$6	\$6	\$5	\$5	\$5	\$5	\$5	\$4	\$5	\$4	\$4
Pruitt PUD 2 Invest		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pruitt PUD 3 CF	1	\$9	\$9	\$9	\$9	\$8	\$8	\$8	\$7	\$7	\$7	\$7	\$7	\$6	\$6	\$6	\$6
Pruitt PUD 3 Invest		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pruitt PUD 4 CF	1	\$9	\$9	\$9	\$9	\$8	\$8	\$8	\$7	\$7	\$7	\$7	\$7	\$6	\$6	\$6	\$6
Pruitt PUD 4 Invest		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pruitt PUD 5 CF	1	\$10	\$11	\$10	\$10	\$9	\$9	\$9	\$8	\$8	\$8	\$8	\$7	\$6	\$7	\$6	\$6
Pruitt PUD 5 Invest		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pruitt PUD 6 CF	1	\$11	\$11	\$10	\$10	\$10	\$10	\$9	\$9	\$8	\$8	\$8	\$8	\$7	\$7	\$7	\$7
Pruitt PUD 6 Invest		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pruitt PUD 7 CF	1	\$13	\$14	\$13	\$13	\$12	\$12	\$11	\$10	\$10	\$9	\$9	\$9	\$8	\$8	\$8	\$8
Pruitt PUD 7 Invest		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pruitt PUD 8 CF	1	\$13	\$14	\$13	\$13	\$12	\$12	\$11	\$10	\$10	\$9	\$9	\$9	\$8	\$8	\$8	\$8
Pruitt PUD 8 Invest		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pruitt PUD 9 CF	1	\$19	\$19	\$18	\$17	\$16	\$15	\$14	\$13	\$13	\$12	\$12	\$11	\$10	\$10	\$9	\$9
Pruitt PUD 9 Invest		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pruitt PUD 10 CF	1	\$19	\$19	\$18	\$17	\$16	\$15	\$14	\$13	\$13	\$12	\$12	\$11	\$10	\$10	\$9	\$9
Pruitt PUD 10 Invest		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Payment - 80% Sweep		\$113	\$119	\$109	\$108	\$100	\$99	\$94	\$87	\$87	\$81	\$81	\$78	\$67	\$73	\$68	\$17
Extra Payment (or Refi)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	\$359	-
DrillCo Facility Interest		\$16	\$15	\$14	\$13	\$12	\$11	\$10	\$9	\$9	\$8	\$7	\$6	\$5	\$5	\$4	-
Cumulative Paid (Less Interest)		\$3,621	\$3,717	\$3,821	\$3,916	\$4,011	\$4,098	\$4,185	\$4,269	\$4,348	\$4,426	\$4,499	\$4,574	\$4,646	\$4,708	\$4,776	\$5,199
Remaining Principal (w/ FinChg) to		\$1,514	\$1,418	\$1,314	\$1,219	\$1,124	\$1,037	\$950	\$866	\$787	\$709	\$636	\$561	\$489	\$427	\$359	-
Additional Fees, Finance Charge, PI																	

Activa Resources, LLC Ch. 11 Financial Model							
For Settlement Purposes Only – Subject to FRE 408							
Values in thousands			2026	2026	2026	2026	2026
			Aug-26	Sep-26	Oct-26	Nov-26	Dec-26
Income Statement							
OilNet(Mbbl)			13.4	14.5	13.9	12.7	15.1
GasNet(MMcf)			42.6	40.4	39.7	36.7	37.4
NGLNet(Mgal)			0.0	0.0	0.0	0.0	0.0
Total Production (Mboe)			20.5	21.2	20.5	18.8	21.4
Oil (\$/bbl)			\$67.03	\$66.83	\$66.65	\$66.39	\$66.21
Gas (\$/mcf)			\$5.40	\$5.40	\$5.47	\$5.72	\$6.18
Oil & GasRev. Net(M\$)			\$1,128	\$1,187	\$1,145	\$1,053	\$1,233
Misc. Rev. Net(M\$)			\$6	\$6	\$6	\$6	\$6
Hedging Gain / Loss			\$0	\$0	\$0	\$0	\$0
Total Revenue			\$1,134	\$1,193	\$1,151	\$1,059	\$1,239
CostsNet (M\$)			(141)	(144)	(143)	(141)	(148)
TaxesNet(M\$)			(\$83)	(\$88)	(\$84)	(\$78)	(\$91)
Total LOE			(\$224)	(\$231)	(\$227)	(\$219)	(\$239)
Operating Cash Flow			\$910	\$962	\$924	\$840	\$999
G&A			(178)	(178)	(178)	(178)	(317)
EBITDAX			\$732	\$784	\$746	\$662	\$683
			Includes \$400k in BK Expenses, Non-Recurring				
DD&A			(\$420)	(\$442)	(\$426)	(\$392)	(\$458)
Interest Expense			(\$60)	(\$59)	(\$58)	(\$57)	(\$57)
Net Income			\$253	\$284	\$262	\$213	\$168
Check							

Cash Flow							
180 day Avg	Net Income		\$253	\$284	\$262	\$213	\$168
	DD&A		420	442	426	392	458
	Change in NWC	Shift (mo)	112	15	(14)	122	(76)
	Operating Cash Flow		\$784	\$741	\$674	\$727	\$551
Invest.Net(M\$)			(415)	-	(1,061)	(433)	-
Investing Cash Flow			(\$415)	-	(\$1,061)	(\$433)	-
Capital Infusion			-	-	-	-	-
DIP Loan Draws (Pruitt)			-	-	-	-	-
DIP Loan Draws (OSR)			-	-	-	-	-
DIP Facility Payments (P&I)			(16)	(16)	(15)	(14)	(15)
New Conforming Facility Refi			-	-	-	-	-
New Conforming Facility Amort			(96)	(97)	(97)	(98)	(99)
TCB Principal Payments			-	-	-	-	-
TCP Paydown			-	-	-	-	-
Pre-BK AP			-	-	-	-	-
Pre-BK Suspense Funds			-	-	-	-	-
Cargill			-	-	-	-	-
Cargill Paydown			-	-	-	-	-
Financing Cash Flow			(\$112)	(\$112)	(\$113)	(\$113)	(\$114)
Starting Cash			\$1,582	\$1,840	\$2,468	\$1,969	\$2,150
Change in Cash			258	628	(500)	181	437
Ending Cash			\$1,840	\$2,468	\$1,969	\$2,150	\$2,587

Check

TCB Facility:

Beginning Balance	-	-	-	-	-
Paydown	-	-	-	-	-
Ending Balance	-	-	-	-	-

Cargill:

Beginning Balance	-	-	-	-	-
Paydown	-	-	-	-	-
Ending Balance	-	-	-	-	-

New Conforming Facility

Beginning Balance	\$7,227	\$7,131	\$7,035	\$6,938	\$6,839
Paydown	(96)	(97)	(97)	(98)	(99)
Ending Balance	\$7,131	\$7,035	\$6,938	\$6,839	\$6,740

Interest:

TCB	-	-	-	-	-
Cargill	-	-	-	-	-
New Conforming Facility	\$60	\$59	\$58	\$57	\$57
Total	\$60	\$59	\$58	\$57	\$57

Prime Rate 8.00% 8.00% 8.00% 8.00% 8.00%

DIP Loan Facility:

OSR PUD1 CF	1	\$18	\$18	\$18	\$17	\$17
OSR PUD1 Invest		-	-	-	-	-
OSR PUD2 CF	0	-	-	-	-	-
OSR PUD2 Invest		-	-	-	-	-
OSR PUD3 CF	0	-	-	-	-	-
OSR PUD3 Invest		-	-	-	-	-
Ruple Farms 1H	1	\$2	\$2	\$2	\$2	\$2
Pruitt PUD 2 Invest		-	-	-	-	-
Pruitt PUD 2 CF	1	\$4	\$4	\$4	\$4	\$4
Pruitt PUD 2 Invest		-	-	-	-	-
Pruitt PUD 3 CF	1	\$5	\$6	\$5	\$5	\$5
Pruitt PUD 3 Invest		-	-	-	-	-
Pruitt PUD 4 CF	1	\$5	\$6	\$5	\$5	\$5
Pruitt PUD 4 Invest		-	-	-	-	-
Pruitt PUD 5 CF	1	\$6	\$6	\$6	\$6	\$6
Pruitt PUD 5 Invest		-	-	-	-	-
Pruitt PUD 6 CF	1	\$6	\$6	\$6	\$6	\$6
Pruitt PUD 6 Invest		-	-	-	-	-
Pruitt PUD 7 CF	1	\$7	\$7	\$7	\$6	\$7
Pruitt PUD 7 Invest		-	-	-	-	-
Pruitt PUD 8 CF	1	\$7	\$7	\$7	\$6	\$7
Pruitt PUD 8 Invest		-	-	-	-	-
Pruitt PUD 9 CF	1	\$9	\$9	\$8	\$8	\$8
Pruitt PUD 9 Invest		-	-	-	-	-
Pruitt PUD 10 CF	1	\$9	\$9	\$8	\$8	\$8
Pruitt PUD 10 Invest		-	-	-	-	-
Payment - 80% Sweep		\$16	\$16	\$15	\$14	\$15
Extra Payment (or Refi)		-	-	-	-	-
DrillCo Facility Interest		-	-	-	-	-
Cumulative Paid (Less Interest)		\$5,216	\$5,231	\$5,247	\$5,263	\$5,277
Remaining Principal (w/ FinChg) to		-	-	-	-	-
Additional Fees, Finance Charge, PI						

## **Exhibit C**

**Exhibit C**  
**(Liquidation Analysis)**

	<b><u>Liquidation Value</u></b>	<b><u>Notes</u></b>
<b>CURRENT ASSETS</b>		
Cash	\$ 2,213,706	Book balance as of October 1, 2022
Accounts Receivable	\$ 900,655	Projected as of October 1, 2022
Other Current Assets		
Inventory	\$ 147,640	Projected value for Debtor-operated properties as of October 1, 2022
Prepaid Expenses	\$ 40,000	Per Schedules of Assets and Liabilities
<b>FIXED ASSETS</b>		Per Schedules of Assets and Liabilities
Furniture & Fixtures	\$ 10,000	
Other Equipment	\$ 10,000	
<b>OTHER ASSETS</b>		
Oil & Gas PDP Assets	\$ 7,393,000	See attached for assumptions. Reflects mid-range projected
Oil & Gas PDnP Assets	\$ 330,000	liquidation sale values.
<b>TOTAL LIQUIDATION VALUE OF ASSETS</b>	<b>\$ 11,045,001</b>	
<b>LIABILITIES</b>		
Chapter 11 Administrative Expenses	\$ 325,000	Includes Fee Claims and post-Petition ordinary course of business
Chapter 7 Trustee Commissions	\$ 555,500	
Chapter 7 Administrative Expenses	\$ 100,000	
DIP Facility	\$ 347,505	
Texas Capital Bank Secured Claim	\$ 10,424,644	
Cargill Secured Claim	\$ 1,170,487	
Operator Claims	\$ 400,000	
Priority Claims	\$ 35,000	
<b>TOTAL ADMIN, SECURED &amp; PRIORITY LIABILITIES</b>	<b>\$ 13,358,137</b>	
<b>TOTAL AVAILABLE FOR UNSECURED CREDITORS AND SUSPENSE CLAIMS</b>	<b>\$ (2,313,136)</b>	

PDP	Net Oil, MBO	Net Gas, MMCF	Net Revenue, M\$	Net Expenses & Tax, M\$	Net CF, M\$	PV10, M\$	Market Range, \$M			Net Daily Oil, BOPD	Net Daily Gas, BOPD
							Low	-	High		
Strip 3P	9,719	10,562	658,381	157,509	355,298	76,177	6,058	-	8,728		
PDP Assets	620	918	47,608	24,170	23,394	14,447	6,025	-	8,695	193	243
ALTA LOMA	-	-	-	-	-	-	-	-	-	-	-
ARCADIA	15	-	1,069	590	480	421	225	-	300	13	-
HALL BAYOU	88	294	7,597	1,779	5,818	3,314				37	80
Halls Bayou - 3 - North Producer PROVED	17	11	1,383	215	1,168	1,012	400	-	500	17	66
Halls Bayou 2 Comp-Cobb&Assoc Model	71	283	6,214	1,564	4,650	2,302	750	-	1,100	20	14
OSR HALLIDAY	168	278	13,654	9,888	3,722	2,612	1,200		1,500	43	68
PILL BRANCH	33	-	2,039	1,353	686	357	140	-	160	5	-
PRUITT	22	-	1,507	556	951	745	160	-	200	19	-
SAN MIGUEL	293	153	20,605	9,359	11,247	6,675	3,100	-	4,820	75	41
El Toro Comanche SM 2602H	6	-	395	177	219	139				2	-
JRED 3101	130	64	8,513	3,580	4,933	2,823				30	15
JRED 3201	47	28	3,150	1,756	1,395	938				14	8
JRED SWD Offset	-	-	1,245	656	590	329				-	-
JRED Wilson 3102H	110	61	7,301	3,191	4,110	2,447				29	17
SWG U	0	192	1,018	549	469	304	50	-	100	-	54
VINTON	2	-	117	96	21	19	-	-	15	1	-
PDnP	0	60	339	149	163	90			33		
PUD	4,490	5,583	314,044	67,082	172,616	33,568					
Probable	4,566	3,982	293,725	65,204	157,364	27,185					
Possible	42	19	2,666	904	1,761	888					

## **Exhibit D**

## ACTIVA – CITRUS FUNDING FACILITY

AMENDED  
AND  
RESTATED  
TERM SHEET

This Amended and Restated Term Sheet (this “Term Sheet”) sets forth the terms and conditions of that certain Exit Financing Facility (the “Facility”) to be provided by Citrus Holdings, LLC, or affiliates (“Lender”) to the Borrower. This term sheet is non-binding. The parties contemplate creating a formal agreement (“Definitive Documents”) in the next 30 days. This Term Sheet amends and restates in its entirety that certain Term Sheet by and between Lender and Borrower dated September 30, 2022.

Date: September 30, 2022

Borrower: Activa Resources, LLC

Facility Loan Amount: Up to \$4.87mm (with such balance including Lender’s existing DIP loan balance of \$307,505.14 plus accrued interest, unpaid attorneys’ fees and costs relating to the \$450,000.00 loan and the previously approved \$40,000 facility origination fee).

Term/Maturity: The Facility shall terminate 4 years from the Origination Date with a 24-month period from the Origination Date within which to obtain funds under the Facility (“Draw Period”).

Use of Proceeds: Land, drilling and completion costs for the wells listed in the Draw Schedule (collectively, the “Program Wells”) and to refinance the existing DIP facility from Lender. The Definitive Documents will outline specific terms and conditions for the Facility to include the draw process, right to cash flow, default provisions, etc. in addition to ensure additional funding is contingent upon the wells to be drilled under the Facility are completed and performing to Performance Parameters. The funding requests and use of funds are authorized for the Program Wells. No more than 2 OSR Halliday field wells may be funded under the Facility. The minimum funding under the Facility will be provided for the OSR PUD 1 well and Pruitt 3H/4H PUD wells (collectively, the “Initial Wells”), which funding shall cover 100% of Borrower’s working interest share of the cost and expense to drill, complete and equip for production the Initial Wells. To the extent Program Wells in addition to the Initial Wells, are funded pursuant the Facility (all such wells, collectively, “Subsequent Wells”), such funding shall also cover 100% of Borrower’s working interest share of the cost and expense to drill, complete and equip for production the Subsequent Wells.

Interest Rate: **Prime Rate published by *The Wall Street Journal* on the Origination Date + 5% per annum** on all amounts outstanding including any fees related to this Facility that are accrued and included in the outstanding loan amount.

Payment: Subject to the provisions of the last sentence of “Use of Proceeds” above, **80% of Borrower’s entitlement to Net Cash Flow** from the Initial Wells and Subsequent Wells funded by the Facility as provided above in “Use of Proceeds”, provided that after the “Hurdle Date” (which term is defined below in “Covenants / Performance Metrics”), Lender shall be entitled to 20% of Borrower’s Working Interest and Net Revenue Interest, and the associated revenues and expenses, from such Initial Wells and Subsequent Wells.



## ACTIVA – CITRUS FUNDING FACILITY

Facility Fee:	<b>\$225,000</b> being due and owing at Maturity or early payoff.
Liens/Collateral:	<p>All of Borrower's right, title and interest in the Pruitt Project AMI acreage, Ruple 1H and 2H wells and future wells.</p> <p>All of Borrower's right, title and interest in the 16,500 acre, OSR Halliday Unit, <u>excluding</u> the existing wellbores, production and facilities (PDP). The Collateral will include the rights to the use of facilities, leases, equipment, easements, right of ways and any and all infrastructure and rights necessary related to the existing wellbores and Unit to drill and develop new wells in properties contemplated under this term sheet.</p> <p>The Facility is intended to be structured with a "DrillCo" component which will include a provision that Borrower shall assign to the Lender 20% of Borrower's right, title and interest as described in Liens/Collateral above upon payment in full of all of the indebtedness and fees under the Facility.</p>
Origination Date:	Effective Date of Borrower's Plan
Draw Schedule:	<p>The Program Wells eligible for funding under the Facility are listed below with the estimated amount and month of the Draw Request noted as an estimate only and subject to change.</p> <p>OSR PUD 1 - Anticipated CAPEX @ \$1,750,000 in December 2022</p> <p>OSR PUD 2 - Anticipated CAPEX @ \$0,000 in August 2023</p> <p>OSR PUD 3 - Anticipated CAPEX @ \$0,000 in January 2024</p> <p>Pruitt 1/2 - Anticipated CAPEX @ \$330,000 in March 2022</p> <p>Pruitt 3/4 - Anticipated CAPEX @ \$770,000 in December 2022</p> <p>Pruitt 5/6 - Anticipated CAPEX @ \$575,000 in April/May 2023</p> <p>Pruitt 7/8 - Anticipated CAPEX @ \$575,000 in October 2023</p> <p>Pruitt 9/10 - Anticipated CAPEX @ \$575,000 in April/May 2024</p> <p>Pruitt Land - Anticipated CAPEX @ \$295,000 in February/March 2023</p>
Closing Timeframe:	On the Origination Date
Covenants/ Performance Metrics:	<p>Standard covenants in Definitive Documents and specific performance and payment requirements to be defined to include a minimum production threshold, schedule for draws, allowance for variances and product prices ("<u>Performance Parameters</u>"). The Performance Metrics will include the following:</p> <p>a. As used herein:</p> <p>i. "<u>First Production Date</u>" means, with respect to an Initial Well, the first day of the first calendar month after the first to occur of the following with respect to such Initial Well:</p> <p>A. Artificial lift is installed and operating per specifications on such Initial Well;</p>

## ACTIVA – CITRUS FUNDING FACILITY

- B. Such Initial Well has had 30 continuous days of production after well stimulation and completion of the lateral cleanup; and
  - C. the trailing 14 day average of production from such Initial Well is not less than 80% of the peak forecasted production rate for such Initial Well as set forth in the Haas Report.
- ii. “Haas Report” means that certain Audit of Certain Oil and Natural Gas Interests located in Arkansas, Louisiana and Texas as of May 1, 2022, prepared for Activa Resources, LLC by Haas Petroleum Engineering Services, Inc.
  - iii. “Hurdle Date” means the first day upon which Lender has received payments of Net Cash Flow for all Program Wells that have been funded in an amount equal to the sum of: (A) all funds advanced by Lender to drill, complete and equip for production such Program Wells; (B) all unpaid interest accrued on such amounts as of such day, and (C) the Facility Fee.
  - iv. “Initial Production” means, with respect to an Initial Well, the aggregate production from such Initial Well for the six consecutive calendar month period commencing on the First Production Date of such Initial Well.
  - v. “Outstanding Facility Balance” means, as of any time, the sum of (A) the aggregate amount drawn under the Facility as of such time (other than any such amounts drawn for Program Wells that have not been drilled, completed and equipped for production as of such time); (B) any accrued but unpaid interest chargeable under the Facility; and (C) that portion of the Facility Fee that has not been paid as of such time.
- b. Borrower shall receive (and provide to Lender) the AFEs for the Initial Wells on or before October 31, 2023 (the “Initial Well AFE Deadline”), provided that Borrower may extend the Initial Well AFE Deadline by up to 120 days upon notice to Lender if the Initial Well AFE Deadline has not occurred by such date because of the inability of the applicable operator to obtain rigs, pipe, other equipment or materials or other supply chain issues.
  - c. In the event the aggregate Initial Production from all three Initial Wells is not less than 70% of the aggregate forecasted hydrocarbon volumes for such Initial Wells as set forth in the Haas Report, Borrower may make additional draws on the Facility to fund its working interest share of the Subsequent Wells. In the event the aggregate Initial Production from all three Initial Wells is less than 70% of the aggregate forecasted hydrocarbon volumes for such Initial Wells as set forth in the Haas Report, Borrower may not make additional draws on the Facility to fund its working interest share of any Subsequent Well without express Lender approval.
  - d. In any calendar month prior to the occurrence of the Hurdle Date, if the amount of Net Cash Flow from the Program Wells payable to Lender in respect of such calendar month is less than 1.39% of the Outstanding Facility Balance as of the beginning of such calendar month (any such calendar month, an “Underpaid

## ACTIVA – CITRUS FUNDING FACILITY

Month”), Lender shall be entitled to 100% of Borrower’s entitlement to the Net Cash Flow from the Program Wells until the first to occur of (A) the Net Cash Flow from the Program Wells payable to Lender in respect of such calendar month is equal to 1.39% of the Outstanding Facility Balance as of the beginning of such calendar month and (B) 100% of the Net Cash Flow from the Program Wells is paid to Lender.

- e. In the event there are three consecutive calendar months that are Underpaid Months for which Lender does not receive Net Cash Flow from the Program Wells in respect of each such calendar month equal to 1.39% of the Outstanding Facility Balance as of the beginning of such calendar month, Lender may provide Borrower a notice of default. Within 60 days after receipt of any such notice of default, Borrower must either, at its sole discretion, elect to (i) pay the then-current Outstanding Facility Balance or (ii) assign, by way of an assignment and bill of sale with a special warranty of title, all of its right, title and interest in and to the then-current Program Wells, which such assignment shall constitute full satisfaction and payment of any amounts owed by Borrower with respect to the Facility.

Wells Not Funded  
By Facility:

In the event any well is proposed in the OSR Halliday Unit or Pruitt Project AMI in which Borrower is participating but funding without Facility proceeds, Lender shall have the right but not the obligation to participate in such well for a working interest that is equal to 20% of Borrower’s aggregate working interest in such well (which represents the interest to which Lender will be entitled in such well upon payment in full of all of the indebtedness and fees under the Facility). If Lender elects not to participate in such well, the interest to which Lender would otherwise be entitled in such well shall be subject to the terms of the applicable operating agreement with respect to such well.

Expenses:

Borrower shall be responsible for all reasonable fees, costs and expenses of Lender including any and all reasonable expenses of Lender’s counsel, professional advisors, or in house administration and shall reimburse such amounts promptly upon demand.

Definitive Documents: Borrower shall deliver to Lender an initial draft of the Definitive Documents within twenty (20) business days following full execution of this term sheet. Lender and Borrower agree that, until Definitive Documents related to the proposed Facility have been approved by the Bankruptcy Court and executed and delivered by Lender and Borrower, Lender, Borrower or any of their respective subsidiaries or affiliates will not be under any legal or equitable obligation of any

## ACTIVA – CITRUS FUNDING FACILITY

kind whatsoever to enter into the Facility by virtue of this Term Sheet or any written or oral expression with respect thereto. In expansion of the foregoing, Lender and Borrower agree that either party may terminate negotiations regarding the proposed Definitive Documents at any time prior to execution and delivery of the Definitive Documents. Nothing in this term sheet is either intended or should in any way be construed as creating a joint venture, partnership or agency relationship of any kind between the Borrower and/or Lender. The parties expressly disclaim any intention of any kind to create any such relationship between them. The parties further agree that the conduct contemplated by this Term Sheet shall not be used as evidence of a joint venture or partnership by any party. Neither party has any fiduciary duty to or relationship with the other. This Term Sheet is not for the benefit of any third party (except as otherwise set forth herein) and shall not be deemed to give any right or remedy to any third-party whether referred to herein or not.

Additional Terms: This Term Sheet (a) shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of law principles thereof that would cause the substantive law of another jurisdiction to govern, (b) except as otherwise provided for herein, may not be amended or modified except by an instrument in writing signed by each of the parties hereto and (c) constitutes the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements with respect to such subject matter (but does not terminate the obligations and agreements under the existing Debtor in Possession Financing Agreement between Lender and Borrower). This term sheet may be executed in one or more counterparts, and each executed counterpart of this terminated may be transmitted by facsimile or e-mailed PDF, with each such transmitted counterpart being treated as a legally binding original signature for all purposes.

If the terms contained in this letter are acceptable, please so indicate by signing, dating and e-mailing an executed copy of this letter back to us. We will then work with you to quickly complete due diligence and prepare actual documents so that closing can occur as contemplated.

CITRUS HOLDINGS, LLC

Chade Nelson

Chade Nelson (Oct 12, 2022 13:50 MDT)

Chade Nelson, Manager

October 12, 2022

ACTIVA RESOURCES, LLC

John Hayes

John Hayes, President

October [12, 2022


# Activa - Citrus Credit Facility AR Term Sheet - Final (1)

Final Audit Report

2022-10-12

Created:	2022-10-12
By:	John Hayes (john@activatld.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAApBffD3EWNahJpD1gOtbeayxIKTk-Y6dl

## "Activa - Citrus Credit Facility AR Term Sheet - Final (1)" History

 Document created by John Hayes (john@activatld.com)


2022-10-12 - 7:45:03 PM GMT- IP address: 67.79.195.194

 Document emailed to cnelson@orangeboxinv.com for signature

2022-10-12 - 7:45:25 PM GMT

 Email viewed by cnelson@orangeboxinv.com

2022-10-12 - 7:50:31 PM GMT- IP address: 73.217.107.244

 Signer cnelson@orangeboxinv.com entered name at signing as Chade Nelson

2022-10-12 - 7:50:47 PM GMT- IP address: 73.217.107.244

 Document e-signed by Chade Nelson (cnelson@orangeboxinv.com)

Signature Date: 2022-10-12 - 7:50:49 PM GMT - Time Source: server- IP address: 73.217.107.244

 Agreement completed.

2022-10-12 - 7:50:49 PM GMT