Solicitation Version

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

In re:	)	Chapter 11
	)	
Blackjewel L.L.C., *et al.*,	)	Case No. 19-30289
	)	
Debtors.[1]	)	(Jointly Administered)

FIRST AMENDED DISCLOSURE STATEMENT FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION FOR BLACKJEWEL L.L.C. AND ITS AFFILIATED DEBTORS

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Dated: October 21, 2020

[1] The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Blackjewel L.L.C. (0823); Blackjewel Holdings L.L.C. (4745); Revelation Energy Holdings, LLC (8795); Revelation Management Corporation (8908); Revelation Energy, LLC (4605); Dominion Coal Corporation (2957); Harold Keene Coal Co. LLC (6749); Vansant Coal Corporation (2785); Lone Mountain Processing, LLC (0457); Powell Mountain Energy, LLC (1024); and Cumberland River Coal LLC (2213). The headquarters for each of the Debtors is located at PO Box 1010, Scott Depot, WV 25560.

IMPORTANT NOTICE

THIS DISCLOSURE STATEMENT AND ITS RELATED DOCUMENTS ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES TO ACCEPT THE *JOINT CHAPTER 11 PLAN OF LIQUIDATION FOR BLACKJEWEL L.L.C. AND ITS AFFILIATED DEBTORS* (THE "PLAN"). NO REPRESENTATIONS HAVE BEEN AUTHORIZED BY THE BANKRUPTCY COURT CONCERNING THE DEBTORS, EXCEPT AS EXPLICITLY SET FORTH IN THIS DISCLOSURE STATEMENT.

THE DEBTORS URGE YOU TO READ THIS DISCLOSURE STATEMENT CAREFULLY FOR A DISCUSSION OF VOTING INSTRUCTIONS, RECOVERY INFORMATION, CLASSIFICATION OF CLAIMS, THE HISTORY OF THE DEBTORS AND THESE CHAPTER 11 CASES, THE DEBTORS' BUSINESSES, AND A SUMMARY AND ANALYSIS OF THE PLAN.

ALL CAPITALIZED TERMS IN THIS DISCLOSURE STATEMENT NOT OTHERWISE DEFINED HEREIN HAVE THE MEANINGS GIVEN TO THEM IN THE PLAN, A COPY OF WHICH IS ATTACHED TO THIS DISCLOSURE STATEMENT AS **EXHIBIT 1**.

INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION OR AMENDMENT. THE DEBTORS RESERVE THE RIGHT TO FILE AN AMENDED PLAN AND RELATED DISCLOSURE STATEMENT FROM TIME TO TIME, SUBJECT TO THE TERMS OF THE PLAN. THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE AN OFFER TO SELL, OR THE SOLICITATION OF AN OFFER TO BUY SECURITIES.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016(c) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE. THE PLAN AND THIS DISCLOSURE STATEMENT WERE NOT REQUIRED TO BE PREPARED IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE NONBANKRUPTCY LAW. DISSEMINATION OF THIS DISCLOSURE STATEMENT IS CONTROLLED BY BANKRUPTCY RULE 3017. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THIS DISCLOSURE STATEMENT WAS PREPARED TO PROVIDE PARTIES IN INTEREST IN THESE CASES WITH "ADEQUATE INFORMATION" (AS DEFINED IN SECTION 1125 OF THE BANKRUPTCY CODE) SO THAT EACH CREDITOR WHO IS ENTITLED TO VOTE WITH RESPECT TO THE PLAN CAN MAKE AN INFORMED JUDGMENT REGARDING SUCH VOTE ON THE PLAN.

THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. THIS DISCLOSURE STATEMENT IS NOT INTENDED TO REPLACE A CAREFUL AND DETAILED REVIEW AND ANALYSIS OF THE PLAN; RATHER THIS DISCLOSURE STATEMENT IS INTENDED ONLY TO AID AND SUPPLEMENT SUCH REVIEW. THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, THE PLAN SUPPLEMENT (WHICH WILL BE FILED NO LATER THAN TEN

CALENDAR DAYS PRIOR TO THE VOTING DEADLINE (AS DEFINED BELOW)), AND THE EXHIBITS ATTACHED THERETO AND THE AGREEMENTS AND DOCUMENTS DESCRIBED THEREIN. IF THERE IS A CONFLICT BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE PROVISIONS OF THE PLAN WILL GOVERN. YOU ARE ENCOURAGED TO REVIEW THE FULL TEXT OF THE PLAN AND PLAN SUPPLEMENT AND TO READ CAREFULLY THE ENTIRE DISCLOSURE STATEMENT, INCLUDING ALL EXHIBITS, BEFORE DECIDING HOW TO VOTE WITH RESPECT TO THE PLAN.

THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS **4:00 P.M. (PREVAILING EASTERN TIME) ON DECEMBER 10, 2020,** UNLESS EXTENDED BY THE DEBTORS (THE "**VOTING DEADLINE**").

THE EFFECTIVENESS OF THE PLAN IS SUBJECT TO MATERIAL CONDITIONS PRECEDENT. THERE IS NO ASSURANCE THAT THESE CONDITIONS WILL BE SATISFIED OR WAIVED.

IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE OCCURS, ALL HOLDERS OF CLAIMS AGAINST, AND HOLDERS OF INTERESTS IN, THE DEBTORS (INCLUDING, WITHOUT LIMITATION, THOSE HOLDERS OF CLAIMS OR INTERESTS WHO DO NOT SUBMIT BALLOTS TO ACCEPT OR REJECT THE PLAN OR WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE TERMS OF THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY.

THIS DISCLOSURE STATEMENT HAS NOT BEEN FILED WITH OR REVIEWED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC") UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR WITH ANY OTHER SECURITIES REGULATORY AUTHORITY OF ANY STATE UNDER ANY STATE SECURITIES OR "BLUE SKY" LAWS. THE PLAN HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SEC, ANY OTHER SECURITIES REGULATORY AUTHORITY, OR ANY STATE SECURITIES COMMISSION, AND NEITHER THE SEC NOR ANY STATE SECURITIES COMMISSION HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN OFFER OR SOLICITATION IN ANY STATE OR OTHER JURISDICTION IN WHICH SUCH OFFER OR SOLICITATION IS NOT AUTHORIZED.

EXCEPT AS OTHERWISE SET FORTH HEREIN, THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE BY THE DEBTORS AS OF THE DATE HEREOF, AND THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT, UNDER ANY CIRCUMSTANCES, CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME SUBSEQUENT TO THE DATE HEREOF OR CREATE ANY DUTY TO UPDATE SUCH INFORMATION.

NO PERSON HAS BEEN AUTHORIZED BY THE DEBTORS IN CONNECTION WITH THE PLAN OR THE SOLICITATION TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT, THE PLAN AND THE EXHIBITS, NOTICES AND SCHEDULES ATTACHED TO OR

INCORPORATED BY REFERENCE OR REFERRED TO IN THIS DISCLOSURE STATEMENT AND/OR THE PLAN, AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MAY NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE DEBTORS.

IT IS THE DEBTORS' POSITION THAT THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, AND NOTHING STATED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PERSON, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PERSON, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON THE DEBTORS OR HOLDERS OF CLAIMS OR INTERESTS.

HOLDERS OF CLAIMS OR INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. EACH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISOR(S) WITH RESPECT TO ANY SUCH MATTERS CONCERNING THIS DISCLOSURE STATEMENT, THE SOLICITATION OF VOTES TO ACCEPT THE PLAN, THE PLAN, THE PLAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY.

THE DEBTORS AND THE COMMITTEE SUPPORT CONFIRMATION OF THE PLAN, AND URGE ALL HOLDERS OF CLAIMS WHOSE VOTES ARE BEING SOLICITED TO ACCEPT THE PLAN.

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Annexed as exhibits (the "**Exhibits**") to this Disclosure Statement are copies of the following documents:

- Plan of Liquidation (Exhibit 1)
- Liquidation Analysis (Exhibit 2)
- Corporate Organization Chart (Exhibit 3)

ARTICLE I

INTRODUCTION

1.1 *General.*

Blackjewel L.L.C. and certain of its affiliates as debtors and debtors in possession (collectively, the "Debtors"),[2] in the chapter 11 cases pending before the United States Bankruptcy Court for the Southern District of West Virginia (the "Bankruptcy Court"), hereby transmit this disclosure statement (as may be amended, supplemented or otherwise modified from time to time, the "Disclosure Statement"), pursuant to section 1125 of title 11 of the United States Code (the "Bankruptcy Code"), in connection with the Debtors' solicitation of votes to confirm the *First Amended Joint Chapter 11 Plan of Liquidation for Blackjewel L.L.C. and its Affiliated Debtors*, dated as of October 21, 2020 (the "Plan").[3] ***All Plan Documents are subject to revision and modification from time to time prior to the Effective Date (subject to the terms of the Plan), which may result in material changes to the terms of the Plan Documents.*** On the Effective Date, the Plan, all Plan Documents, and all other agreements entered into or instruments issued in connection with the Plan and any Plan Document, shall become effective and binding in accordance with their respective terms and conditions upon the parties thereto and shall be deemed to become effective simultaneously.

The purpose of this Disclosure Statement is to set forth information: (i) regarding the history of the Debtors and their businesses; (ii) describing these Chapter 11 Cases; (iii) concerning the Plan; (iv) advising the holders of Claims and Interests of their rights under the Plan; and (v) assisting the holders of Claims entitled to vote on the Plan in making an informed judgment regarding whether they should vote to accept or reject the Plan.

The Debtors seek Bankruptcy Court approval of the Plan. Before soliciting acceptances of a proposed plan, section 1125 of the Bankruptcy Code requires a plan proponent to prepare a disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance of a chapter 11 plan. This Disclosure Statement is being submitted in accordance with such requirements. This Disclosure Statement includes, without limitation, information about:

- the Debtors' corporate history and corporate structure, business operations, and prepetition capital structure and indebtedness (Article III hereof);
- events leading to these Chapter 11 Cases (Article IV hereof);
- significant events in these Chapter 11 Cases (Article V hereof);

[2] This Disclosure Statement and the proposed *First Amended Joint Plan of Liquidation for Blackjewel L.L.C. and its Affiliated Debtors* relate to the following debtors and debtors-in-possession: Blackjewel L.L.C.; Blackjewel Holdings L.L.C.; Revelation Energy Holdings, LLC; Revelation Management Corporation; Revelation Energy, LLC; Dominion Coal Corporation; Harold Keene Coal Co. LLC; Vansant Coal Corporation; Lone Mountain Processing, LLC; Powell Mountain Energy, LLC; and Cumberland River Coal LLC.

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

- the classification and treatment of Claims and Interests under the Plan, including who is entitled to vote and how to vote on the Plan (Article II hereof);
- certain important effects of Confirmation of the Plan (Article VIII hereof);
- releases contemplated by the Plan (Article VIII hereof);
- the statutory requirements to confirm the Plan (Article VIII hereof);

In light of the foregoing, the Debtors believe this Disclosure Statement contains "adequate information" to enable a hypothetical reasonable investor to make an informed judgment about the Plan and complies with all aspects of section 1125 of the Bankruptcy Code.

The Debtors and the Committee support confirmation of the Plan and urge all Holders of Claims entitled to vote, vote to accept the Plan.

Additional copies of this Disclosure Statement (including all Exhibits) are available upon request to the Debtors' Administrative Advisor, Prime Clerk LLC ("Prime Clerk"), at the following address:

Blackjewel L.L.C. – Ballot Processing
c/o Prime Clerk LLC
60 East 42nd Street, Suite 1440
New York, NY 10165

Additional copies of this Disclosure Statement (including all Exhibits) can also be accessed free of charge from the following website: https://cases.primeclerk.com/blackjewel (the "Case Website").

Each holder of a Claim entitled to vote on the Plan should read this Disclosure Statement, the Plan, the Plan Supplement, the other Exhibits attached hereto, and the instructions accompanying the Ballots in their entirety before voting on the Plan. These documents contain important information concerning the classification of Claims and Interests for voting purposes and the tabulation of votes.

1.2 *Combined Hearing for Disclosure Statement and Plan Confirmation.*

In accordance with section 1128 of the Bankruptcy Code, a combined hearing will be held before the Honorable Benjamin A. Kahn, United States Bankruptcy Judge for the United States Bankruptcy Court for the Middle District of North Carolina to consider the adequacy of the Disclosure Statement and the confirmation of the Plan (the "Confirmation Hearing"). At the Confirmation Hearing, the Debtors will request confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code, and will reserve the right to modify the Plan to the extent, if any, that confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, subject to the terms of the Plan.

At the Confirmation Hearing, the Bankruptcy Court will, among other things:

- determine whether information provided in the Disclosure Statement was adequate as defined in section 1125 of the Bankruptcy Code;
- determine whether sufficient majorities in number and amount from each Class entitled to vote have delivered properly executed votes accepting the Plan to approve the Plan;
- hear and determine objections, if any, to the Plan and to confirmation of the Plan that have not been previously disposed of;
- determine whether the Plan meets the confirmation requirements of the Bankruptcy Code; and
- determine whether to confirm the Plan.

1.3 *Classification of Claims and Interests.*

As set forth in Article III of the Plan, and in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code, the following table designates the Classes of Claims against and Interests in the Debtors, and specifies which Classes are: (a) Impaired or Unimpaired by the Plan, (b) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code, and (c) deemed to accept or reject the Plan.

Class	Claims	Status	Voting Rights
Class 1	Other Priority Claims	Impaired	Entitled to Vote
Class 2	Secured Claims	Impaired	Entitled to Vote
Class 3	General Unsecured Claims	Impaired	Entitled to Vote
Class 4	510 Claims	Impaired	Presumed to Reject
Class 5	Intercompany Interests	Impaired	Presumed to Reject
Class 6	Non-Intercompany Interests	Impaired	Presumed to Reject

1.4 *General Voting Information; How to Vote.*

To understand whether you are entitled to cast votes on the Plan and how to do so, you should review the content of this section of the Disclosure Statement and the voting procedures described in the *Debtors' Motion for Entry of an Order (I) Scheduling a Combined Hearing for Disclosure Statement Approval and Plan Confirmation, (II) Establishing the Solicitation Procedures and Dates, Deadlines, and Notices Related Thereto, and (III) Granting Related Relief,* filed contemporaneously herewith (the "Voting Procedures"). You may obtain a copy of the Voting Procedures, from the Case Website or by (i) calling Prime Clerk at (844) 234-1462; (ii) emailing

Prime Clerk at blackjewelballots@PrimeClerk.com; or (iii) writing to Prime Clerk at Blackjewel L.L.C., Ballot Processing, c/o Prime Clerk, 60 East 42nd Street, Suite 1440, New York, NY 10165.

(a) **General Voting Information.**

Pursuant to the provisions of the Bankruptcy Code, only holders of allowed claims or equity interests in classes of claims that are "impaired" and not deemed to have accepted or rejected a chapter 11 plan are entitled to vote to accept or reject such proposed plan. Generally, a claim or interest is "impaired" under a plan if the holder's legal, equitable or contractual rights are altered under a chapter 11 plan. Classes of claims or equity interests under such a plan in which the holders of claims or equity interests are unimpaired are deemed to have accepted such plan and are not entitled to vote to accept or reject the proposed plan. In addition, classes of claims or equity interests in which the holders of claims or equity interests will not receive or retain any property on account of their claims or equity interests are deemed to have rejected a chapter 11 plan and are not entitled to vote to accept or reject such plan.

As shown in the table in Article I, the Debtors are soliciting votes to accept or reject the Plan only from Holders of Claims in Classes 1, 2, and 3. The Holders of Claims in Classes 1, 2, and 3 are Impaired under the Plan and may, in certain circumstances, receive a distribution under the Plan. Accordingly, Holders of Claims in Classes 1, 2, and 3 have the right to vote to accept or reject the Plan.

The Debtors are ***not*** soliciting votes on the Plan from Holders of Claims or Interests in Classes 4, 5, and 6, provided that each such Holder in an impaired or potentially impaired class shall receive a form on which to designate its election not to grant the releases under the Plan.

The Bankruptcy Code defines "acceptance" of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds in dollar amount and more than one-half in number of the claims that cast ballots for acceptance or rejection of the chapter 11 plan. **Your vote on the Plan is important**. The Bankruptcy Code requires, as a condition to confirmation of a chapter 11 plan, that each class that is impaired and entitled to vote under a plan vote to accept such plan, unless the requirements of section 1129(b) of the Bankruptcy Code are satisfied.

If a Class of Claims entitled to vote on the Plan rejects the Plan, the Debtors reserve the right to amend the Plan or to request confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to such Class. Section 1129(b) of the Bankruptcy Code permits the confirmation of a chapter 11 plan notwithstanding the non-acceptance of such plan by one or more impaired classes of claims or interests, so long as at least one impaired class of claims or interests votes to accept such plan (excluding any votes of insiders). Under that section, a chapter 11 plan may be confirmed by a bankruptcy court if it does not "discriminate unfairly" and is "fair and equitable" with respect to each non-accepting class.

If you are entitled to vote to accept or reject the Plan, please follow the instructions for doing so summarized below and as more fully set forth in the Voting Procedures. This Disclosure Statement, the Exhibits attached hereto, the Plan and the related documents are the only materials the Debtors are providing to creditors for their use in determining whether to vote to accept or

reject the Plan, and it is the Debtors' position that such materials may not be relied upon or used for any purpose other than to vote to accept or reject the Plan.

(b) **Summary Description of How to Vote on the Plan.**

If you are entitled to vote to accept or reject the Plan:

- you will receive a mailing with a set of instructions (the "**General Voting Instructions**") that (i) lists the Claims with respect to which you are entitled to cast a vote on the Plan; (ii) sets forth the steps necessary to submit a vote on the Plan online through a website specifically designed for submission of votes on the Plan (the "**Voting Website**"); (iii) includes personalized login credentials to access the Voting Website; (iv) describes how, as an alternative to voting online, you may submit a paper Ballot by mail; and (v) describes how you may obtain additional information regarding voting on the Plan; and

- you must submit votes either online through the Voting Website or by mail, overnight courier, or hand delivery on a paper Ballot so that they are actually received by Prime Clerk on or before the Voting Deadline.

ARTICLE II

SUMMARY OF PLAN AND CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS THEREUNDER

2.1 *General Rules of Classification.*

Pursuant to sections 1122 and 1123(a) of the Bankruptcy Code, set forth below is a designation of Classes of Claims against and Interests in the Debtors.

Administrative Expense Claims, Fee Claims, U.S. Trustee Fees and Priority Tax Claims of the kinds specified in sections 507(a)(2) and 507(a)(8) of the Bankruptcy Code have not been classified and are excluded from the following classes in accordance with section 1123(a)(1) of the Bankruptcy Code.

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 or Interest is also 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 Allowed in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date.

2.2 *Summary of Treatment of Claims and Interests Under the Plan.*

The following table classifies Claims against, and Interests in, the Debtors into separate Classes and summarizes the treatment of each Class under the Plan. The table also identifies which Classes are entitled to vote on the Plan based on the provisions of the Bankruptcy Code. Finally, the table indicates the estimated recovery for each Class. The summaries in this table are qualified in their

entirety by the description and the treatment of such Claims and Interests in the Plan. **As described in Article X below, the representations made in this Disclosure Statement and the Plan are subject to a number of risks. The recoveries and estimates described in the table represent the Debtors' best estimates given the information available on the date of this Disclosure Statement. All statements relating to the aggregate amount of Claims and Interests in each Class are only estimates based on information known to the Debtors as of the date hereof, and the final amounts of Allowed Claims in any particular Class may vary significantly from these estimates.**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Fee Claims, U.S. Trustee Fees and Priority Tax Claims have not been classified. Except as specifically provided in the Plan, the Confirmation Order or other order of the Bankruptcy Court, or required by applicable bankruptcy or non-bankruptcy law, the Plan does not provide for payment of post-petition interest on any Allowed Claims.

Important Note on Estimates

The estimates in the tables and summaries in this Disclosure Statement may differ from actual distributions because of variations in the asserted or estimated amounts of Allowed Claims, the existence of Disputed Claims and other factors. Statements regarding projected amounts of Claims or distributions (or the value of such distributions) are estimates by the Debtors based on current information and are not representations as to the accuracy of these amounts. Except as otherwise indicated, these statements are made as of the date of this Disclosure Statement, and the delivery of this Disclosure Statement will not, under any circumstances, imply that the information contained in this Disclosure Statement is correct at any other time. Any estimates of Claims or Interests in this Disclosure Statement may vary from the final amounts of Claims or Interests allowed by the Bankruptcy Court.

Class	***Description***	***Treatment***	***Entitled to Vote***	***Estimated Amount of Claims in Class***[4]	***Estimated Recovery***
Class 1	Other Priority Claims	Except to the extent that a holder of an Allowed Other Priority Claim has already been satisfied during the Chapter 11 Cases or a holder of an Allowed Other Priority Claim and the applicable Debtor(s) agree to less favorable treatment, each holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction, compromise, settlement, and release of and in	Yes	$42-$76 million	0%-100%

[4] The amounts set forth in this chart reflect the Debtors' most current estimates of projected claim amounts, which reflect changes to the Debtors' assumptions subsequent to the filing of the Debtors' Schedules and Statements.

Class	*Description*	*Treatment*	*Entitled to Vote*	*Estimated Amount of Claims in Class*[4]	*Estimated Recovery*
		exchange for its Claim, payment in full and in Cash from Distributable Cash until such Claims are satisfied as required by the Bankruptcy Code. For the avoidance of doubt, holders of Allowed Other Priority Claims will not receive any Distribution on the Effective Date and will only receive a Distribution as Distributable Cash becomes available to the Liquidation Trust. Distributions to the holders of Allowed Other Priority Claims shall comply with the priorities of the Bankruptcy Code. The failure to object to the Plan shall be deemed to be such Holder's consent to accept less than full payment of its Claim on the Effective Date as required by section 1129(a)(9) and as contemplated under sections 1124 and 1123(a)(4) of the Bankruptcy Code.			
Class 2	Other Secured Claims	Except to the extent that a holder of an Allowed Secured Claim agrees to a less favorable treatment, in full satisfaction, settlement, and release of, and in exchange for such Claim, each holder of an Allowed Secured Claim shall receive one of the following treatments, determined at the option of the Debtors or the Liquidation Trustee, as applicable: (i) the Collateral securing such Allowed Secured Claim to the holder of such Claim; (ii) retention of any valid Liens on Collateral, to the extent of the value of the Claim holder's interest in such Collateral as of the Confirmation Date; or (iii) such other treatment as may be agreed to by the holder of such Claim and the Debtors or the Liquidation Trustee, as applicable. For the avoidance of doubt, no holder of an Allowed Secured Claim will receive any Cash unless it has a valid, unavoidable lien on such Cash and Cash is available from Distributable Cash to satisfy such Claim.	Yes	$11-21 million	13%-100%
Class 3	General Unsecured Claims	Except to the extent that a holder of an Allowed General Unsecured Claim agrees to a less favorable treatment, in full satisfaction, settlement, and release of, and in exchange for such Claim, each holder of an Allowed General Unsecured Claim shall receive its pro rata share of	Yes	$292 - $364 million	0%-15%

Class	*Description*	*Treatment*	*Entitled to Vote*	*Estimated Amount of Claims in Class*[4]	*Estimated Recovery*
		any remaining Distributable Cash after all Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Fee Claims, Allowed Other Priority Claims, and Allowed Secured Claims (to the extent such claims are entitled to any Distributable Cash) have been satisfied as required by the Bankruptcy Code. Each holder of an Allowed General Unsecured Claim shall receive an Avoidance Action Release.			
Class 4	510 Claims	Holders of 510 Claims shall not receive any Plan Distributions on account of such Claims.	No	N/A	$0
Class 5	Intercompany Interests	On the Effective Date, all Intercompany Interests shall be deemed cancelled and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and there shall be no Plan Distributions to the holders of Intercompany Interests.	No	N/A	$0
Class 6	Non-Intercompany Interests	On the Effective Date, all Non-Intercompany Interests shall be deemed cancelled and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and there shall be no Plan Distributions to the holders of Non-Intercompany Interests.	No	N/A	$0

The recoveries set forth above are estimates and are contingent upon approval of the Plan as proposed.

2.3 *Treatment of Administrative Expense Claims and Priority Tax Claims.*

Any unpaid Administrative Expense Claim or Priority Tax Claims not otherwise satisfied prior to the Effective Date will receive the treatment set forth in Article 2.1 of the Plan. It is likely that there will not be enough cash to satisfy all Allowed Administrative Expense Claims or all Priority Tax Claims in full in Cash.

Although it is likely that certain parties will be paid a higher percentage of their respective Administrative Claims incurred during these chapter 11 cases, the Debtors believe holders of Administrative Expense Claims and Priority Tax Claims will receive a greater recovery under the Plan than any other alternative path, including dismissal or conversion of these cases to cases under chapter 7 of the Bankruptcy Code.

The treatment afforded to holders of Administrative Expense Claims and Priority Tax Claims under the Plan is only available if each such holder agrees to such treatment. The failure to object to confirmation of the Plan by a holder of an Administrative Expense Claim or Priority Tax Claim

prior to December 10, 2020 shall be deemed to be such holder's consent and agreement to receive treatment for such Claim that is different from that set forth in 11 U.S.C. § 1129(a)(9), which otherwise requires payment in full in cash. If a holder of an Allowed Administrative Expense Claim or Priority Tax Claim objects to confirmation of the Plan asserting that it is entitled to payment in full under section 1129(a)(9) of the Bankruptcy Code, the Debtors may not be able to confirm the Plan. It is possible that holders of Administrative Expense Claims and Priority Tax Claims may receive a smaller distribution on account of their Claims under any alternative to the Plan.

The quantum of Allowed Administrative Expense Claims and the related recovery available to satisfy such Administrative Expense Claims are dependent on a number of variables and conditions subsequent that are outside the control of the Debtors. Those factors include, but are not limited to, recoveries from the Litigation Proceedings and the ultimate timing and manner of the closing of these Chapter 11 Cases.

ARTICLE III

BUSINESS DESCRIPTION; HISTORICAL INFORMATION

3.1 *The Debtors' Prepetition Businesses.*

(a) **Overview.**[5]

As of the Petition Date, the Debtors' core business was mining and processing metallurgical, thermal and other specialty and industrial coals. Blackjewel L.L.C. ("Blackjewel"), the primary operating Debtor, at different times operated 32 properties, including surface and underground coal mines, preparation or wash plants, and loadouts or tipples. As of the Petition Date, the Debtors held more than 500 mining permits, which is more than any other enterprise in the country. Attached hereto as **Exhibit 3** is a corporate organization chart of the Debtors.

The Debtors' operations are located in the Central Appalachian Basin in Virginia, Kentucky and West Virginia (the "Eastern Division") and the Powder River Basin in Wyoming (the "Western Division"). The Eastern Division is divided into four subdivisions—Black Mountain/Lone Mountain, Virginia, BHL, and Northern. Coal mined from the Eastern Division is a mix of mid and high volatility metallurgical coal and specialty and industrial coals, with thermal coal as a by-product. The Eastern Division holds approximately 600 million reserve tons, has an average mine life of 30 years or more, and was forecasted to produce up to 6 million tons per year. The Eastern Division produced 3.3 million tons in 2018. The Eastern Division employed approximately 1,100 employees.

The Western Division operates the Eagle Butte and Belle Ayr mines in northeast Wyoming and produces low sulfur, sub-bituminous thermal coal. The Western Division holds approximately 600 million reserve tons. The average permitted mine life in the Western Division is 20 years with an

[5] While stated in the present tense, the information contained in this Overview section is accurate as of the Petition Date. As of the date of this Disclosure Statement, however, virtually all of the Debtors' assets and operations have been sold.

annual production capacity of 36 million tons. The Western Division produced 35.5 million tons in 2018. The Western Division employed approximately 600 employees.

(b) **Equity Ownership.**

(i) Senior Preferred Units

On July 14, 2017, Blackjewel Holdings, L.L.C. created a class of units designated as Senior Preferred Units. As of the Petition Date, 40,000 Senior Preferred Units (which were originally issued on August 21, 2017 at a purchase price of $100 per such Senior Preferred Unit) were issued and outstanding. The John Reynolds Revocable Trust owns 20,000 Senior Preferred Units or 50% of such units and Blackjewel Investment, L.L.C. own 20,000 Senior Preferred Units or 50% of such units.

(ii) Series A Units

On July 15, 2017, Blackjewel Holdings, L.L.C. created a class of units designated as Series A Units. As of the Petition Date, 1,000 Series A Units were issued and outstanding. LR-Revelation Holdings, L.P. owns 625 Series A Units or 62.5% of such units and Blackjewel Investment L.L.C. owns 375 Series A Units or 37.5% of such units.

(c) **Formation and Prepetition Assets.**

In July 2017, in connection with a strategic restructuring of its business, Blackjewel entered into a Purchase and Sale Agreement with Revelation Energy, LLC ("Revelation Energy"), whereby Blackjewel purchased most, but not all, of Revelation Energy's equipment and rights to mine certain properties in exchange for the assumption of certain reclamation liabilities (the "2017 Transaction"). As part of the 2017 Transaction, Revelation Energy also transferred to Blackjewel the Lone Mountain subdivision assets, which Revelation Energy purchased from Arch Coal, Inc. Revelation thereafter continued to operate primarily in a reclamation capacity and holds or held a limited number of permits.

At the time, the 2017 Transaction was intended to (i) transition the business from primarily surface coal mining of thermal coal (which Revelation Energy was primarily focused on) to underground mining of metallurgical coal, (ii) take advantage of the increase of coal prices in the metallurgical coal market and move away from the apparent continued depression of the thermal coal market, and (iii) create a market-friendly name that metallurgical coal purchasers could know and trust in Blackjewel.

Blackjewel's assets were primarily acquired from struggling coal mining firms and then revitalized. The Northern subdivision assets were acquired from Hylton, the BHL subdivision assets were acquired from James River Coal Company and its debtor affiliates, the Black Mountain subdivision assets were acquired from Alpha Natural Resources, and the Virginia subdivision assets were acquired from SunCoke Energy. After the 2017 Transaction closed, Blackjewel acquired additional assets, including the Western Division assets from Contura Energy, Inc. ("Contura"). The purchase of Contura's Powder River Basin assets marked the Debtors' resurgence in the thermal coal market.

(d) **Joint Venture with Javelin and Uniper.**

Once mined and processed, the Debtors' coal was marketed by non-Debtor Blackjewel Marketing and Sales Holdings ("BJMS"). BJMS is a joint venture formed in December 2017 by Blackjewel, Javelin Global Commodities Ltd. ("Javelin"), and Uniper SE ("Uniper"). Javelin manages and owns 40% of BJMS. Blackjewel and Uniper each own 30% of BJMS. Blackjewel had no authority over or control of BJMS and Blackjewel was not affiliated with or related in any way with Javelin and Uniper.

BJMS is the only customer of Blackjewel. Thus, BJMS was tasked with marketing 100% of the thermal and metallurgical coal produced at the Debtors' mines. The Debtors did not sell coal to any party other than BJMS. As part of the joint venture arrangement, Javelin had been granted exclusive marketing rights for the domestic and export sale of metallurgical coal and domestic sale of thermal coal. Uniper has the exclusive marketing rights for the export of thermal coal.

Javelin and Uniper contribute hedging, logistics, execution and optimization services.[6] The BJMS joint venture worked as follows: (i) the Debtors contributed 100% of their thermal and metallurgical coal production to BJMS; (ii) Javelin and Uniper marketed and sold the coal to third-party purchasers across the world; (iii) Javelin and Uniper provided the back end support necessary to market and sell the coal, and (iv) Uniper financed the costs associated with transporting, marketing and selling coal. Once the coal was sold, the proceeds were remitted to the Debtors, less a 1% marketing fee and 4.5% interest due on the BJMS Facility. The Debtors sold their interest in BJMS during these Chapter 11 Cases as more fully described in section 5.14.

3.2 ***Debtors' Pre-petition Capital Structure.***

(a) **Secured Debt.**

(i) Riverstone Facility

Pursuant to that certain Credit Agreement dated July 17, 2017 between Blackjewel, as borrower, Blackjewel Holdings, L.L.C., as guarantor, Riverstone Credit Partners – Direct, L.P. ("Riverstone"), as Agent (in such capacity, the "RS Agent"), L-R Revelation Holdings, LP, as lender, and Jeffery A. Hoops, Sr. ("Hoops"), as lender (as such agreement has been amended from time to time and together with all other documents, agreements, and instruments delivered in connection therewith, the "Riverstone Agreement"), Blackjewel obtained a term loan facility in the aggregate principal amount of $34,000,000 (the "Riverstone Facility"). As part of the Riverstone Facility, Hoops provided a Hoops Tranche Loan (as defined in the Riverstone Agreement) in the total amount of $3,000,000. In addition, as part of the Riverstone Facility, L-R Revelation Holdings, LP (associated with Lime Rock Partners) provided another tranche loan in the total amount of $3,000,000. As of the Petition Date, the outstanding principal balance of the Riverstone Facility was $34 million.

[6] BJMS had a $50 million revolving credit facility with Uniper that is guaranteed by Blackjewel on an unsecured basis (the "BJMS Facility"). The BJMS Facility financed the costs associated with transporting, marketing and selling coal.

Blackjewel paid interest in respect of the outstanding unpaid principal amount of the loans at the Base Rate Option or LIBOR Rate Option (both as defined in the Riverstone Agreement), as applicable, as well as an additional 2% per annum for the default rate (effective December 31, 2018). The Riverstone Facility matured on July 17, 2019 pursuant to the Riverstone Agreement.

The RS Agent held a first-priority security interest in and continuing lien upon substantially all of Blackjewel's assets, subject only to certain Permitted Prior Liens (as defined in the Riverstone Agreement). An Intercreditor Agreement effective as of September 14, 2017 between United Bank, Inc. ("United Bank"), Riverstone, as the RS Agent, and Blackjewel governed such parties' priorities with respect to their respective loans and collateral, according to which the RS Agent agreed to have a second-priority security interest in the United Bank Collateral, as defined below. The Riverstone Facility was paid in full pursuant to the settlement more fully discussed in section 5.14.

(ii) United Bank Loans

Pursuant to that certain Second Amended and Restated Loan and Security Agreement, dated February 28, 2013 (as amended from time to time, the "United Bank Loan Agreement") between United Bank, Revelation Energy, as debtor, Blackjewel, as debtor, Revelation Energy Holdings, LLC, as guarantor, Alpha Highwall Mining LLC, as guarantor, and Blackjewel Holdings L.L.C., as guarantor, and that certain Amended and Restated Revolving Line of Credit Note dated February 28, 2013, United Bank extended certain loans to Blackjewel under a revolving line of credit. As of the Petition Date, United Bank's revolving line of credit and term loan had outstanding principal balances of $5,000,000 and $1,003,393.21, respectively.

In connection with such loans, United Bank was granted a first priority lien on the collateral as further described in the United Bank Loan Agreement, which includes but is not limited to "all of Debtor's accounts . . . established at Secured Party; (ii) all of Debtor's account receivables; (iii) all guaranties, collateral, liens on, or security interest in, real or personal property, leases, letters of credit, and other rights, agreement, and property securing or relating to payment of account receivables . . ." (each capitalized term, as defined in the United Bank Loan Agreement) (collectively, the "United Bank Collateral").

(iii) Caterpillar Loan

Pursuant to the Amended and Restated Security Agreement and Promissory Note, dated February 28, 2017, between Revelation Energy and Caterpillar Financial Services Corporation ("Caterpillar"), as amended by the First Amendment to Amended and Restated Security Agreement and Promissory Note dated March 3, 2017, the Second Amendment to Amended and Restated Security Agreement and Promissory Note dated as of June 29, 2017, and the Third Amendment to Amended and Restated Security Agreement dated July 17, 2017, Caterpillar agreed to finance an equipment loan (the "Caterpillar Loan") in the aggregate amount of $58,001,949.40, which amount was later reduced to $46,476,941.46. The Caterpillar Loan was secured by a first priority lien on several pieces of heavy mining equipment (such as dozers, trucks, excavators and loaders, as specifically identified in the Caterpillar Loan, the "Caterpillar Collateral"). At the time of the execution of the Riverstone Agreement, the RS Agent was granted a second priority lien on the Caterpillar Collateral to secure the Debtors' obligations under the Riverstone Facility. As of the

Petition Date, the Debtors estimated that they owed approximately $23,837,183.63 to Caterpillar under the Caterpillar Loan.[7]

(iv) Fifth Third Bank Loan

Pursuant to a certain Master Loan and Security Agreement, dated July 12, 2011, by and between Fifth Third Bank ("Fifth Third"), and Revelation Energy, as borrower, Revelation Energy borrowed $20,000,000 to purchase certain heavy mining equipment, such as dozers, excavator, and trucks. By a Loan Agreement dated July 2, 2012 between Fifth Third, as lender, Revelation Energy, as borrower, and Revelation Energy Holdings, LLC, as guarantor, an additional sum of $5,200,000.00 was borrowed from Fifth Third to purchase a heavy piece of equipment called a Highwall Miner. Fifth Third's loans are secured by purchase-money security interests in the equipment purchased with the proceeds of the loans.

Revelation Energy and Revelation Energy Holdings, LLC were involved in litigation with Fifth Third relating to the outstanding balance of the loans extended by Fifth Third. Fifth Third was awarded a judgment in the amount of $7,324,543.24, plus prejudgment interest in the amount of $18,285.64. The Highwall Miner equipment is the only remaining property subject to Fifth Third's lien.[8]

(v) Javelin Agreement

Pursuant to a certain Purchase and Sale Agreement, dated December 11, 2017, and related Security Agreement of the same date, Javelin agreed to purchase from Blackjewel 176,000 short tons of thermal coal to be produced by Blackjewel in the future. Javelin paid a pre-purchase amount of $5,000,000 as a one-time prepayment for the purchased coal. As security for the pre-payment, Blackjewel granted Javelin a security interest in its right, title, and interest in the thermal coal subject to the Purchase and Sale Agreement. As of the Petition Date, the pre-purchase amount was reduced to an amount of $1,791,678.00.

(vi) Uniper Agreement

Pursuant to a certain Purchase and Sale Agreement, dated December 11, 2017, and related Security Agreement of the same date, Uniper agreed to purchase from Blackjewel 176,000 short tons of thermal coal to be produced in the future by Blackjewel. Uniper paid a pre-purchase amount of $5,000,000 as a one-time prepayment for the purchased coal. As security for the pre-payment, Blackjewel granted Uniper a security interest in its right, title, and interest in the thermal coal subject to the Purchase and Sale Agreement. As of the Petition Date, the pre-purchase amount was reduced to an amount $4,952,875.00.

[7] Pursuant to an agreed order, the Bankruptcy Court granted Caterpillar relief from the automatic stay to repossess the Caterpillar Collateral [Docket No. 1143].

[8] Pursuant to an agreed order, the Bankruptcy Court granted Fifth Third relief from the automatic stay to repossess the Highwall Miner [Docket No. 1145.]

(vii) Other Equipment and Capital Leases

The Debtors have various equipment and capital leases for printers, copiers, heavy mining and crushing equipment and vehicles at various mining sites and locations, which equipment is, in some cases, idle. Some of these leases have buy-out options while others have the option for the Debtors to acquire the equipment or vehicle for fair market value. Many of the lessors have filed financing statements in an effort to secure the Debtors' obligations under these agreements.

(viii) Other Secured Debt

In the ordinary course of business, the Debtors may incur other miscellaneous secured debt from time to time, including reclamation and other obligations that are backed by surety bonds and/or tax obligations that might be subject to statutory liens in favor of a particular governmental entity.

(b) **Unsecured Debt.**

(i) Hoops Transactions

Prior to the Petition Date, Hoops, then the President and Chief Executive Officer of Debtor Blackjewel and Clearwater Investment Holdings, LLC ("Clearwater") and various entities owned, controlled or otherwise affiliated with Hoops or the spouse or descendants of Hoops, including (but not limited to) Lexington Coal Company, LLC, purportedly made a number of cash advances to the Debtors which were characterized by Hoops and Clearwater as revolving credit advances and other unsecured loans or extensions credit of to the Debtors (collectively, the "Prepetition Hoops Cash Transfers"). The Prepetition Hoops Cash Transfers, which were purportedly advanced and repaid on a revolving basis and were not documented, were purportedly made to enable the Debtors to pay ordinary course costs and expenses. As of the Petition Date, the amount outstanding on the Prepetition Hoops Cash Transfers was $11,020,131.23, which amount comprises the total amount of advances from Prepetition Hoops Cash Transfers, less the approximately $40 million in cash extracted by Hoops from the Debtors during the period of the Prepetition Hoops Cash Transfers. Payments on the Prepetition Hoops Cash Transfers were purportedly intended to be payments on the debt owed under the Prepetition Hoops Cash Transfers and reduced the balance on the Prepetition Hoops Cash Transfers. Notwithstanding Hoops's characterization of the Prepetition Hoops Cash Transfers as revolving credit advances, unsecured loans, and/or extensions of credit, or the inclusion of a description of the Prepetition Hoops Cash Transfers in this section, the Debtors dispute the characterization of the Prepetition Hoops Cash Transfers as revolving credit advances, unsecured loans, and/or extensions of credit, and have requested discovery from Hoops and the Hoops Parties in connection with, among other things, the Prepetition Hoops Cash Transfers, as further discussed in section 5.19.

(ii) Trade Debt

In the ordinary course of business, the Debtors purchase or lease mining equipment and processing supplies and use other services and goods from numerous vendors. These vendors provide numerous services associated with the process of blasting the rock to allow the mining process and the provision of equipment related thereto. Also, materials to keep the machinery running, such as oil, grease, lube, other equipment parts and hoses are purchased for the maintenance of the

equipment. The Debtors have very large costs associated with the day-to-day operation of their coal mines as well as costs which are less common, but are still incurred thorough the year.

ARTICLE IV

EVENTS LEADING TO CHAPTER 11 FILING

A confluence of factors contributed to the Debtors' need to commence these Chapter 11 Cases. These include a general downturn in the coal industry, increased regulatory requirements, and operational difficulties.

(a) Challenging Coal Operating Environment.

Since 2012, the coal industry has been under intense pressure driven by a combination of declining commodity prices, reduced domestic demand for thermal and metallurgical coal, and increased oversight and costs associated with regulatory compliance. As a result, the industry as a whole has been operating in a generally higher cost environment than prior periods. A combination of an abundant, cheap and reliable alternative fuel in the form of natural gas, increased usage of renewable sources of energy, and the shutting down of coal fired power plants largely due to increased regulatory pressure and costs severely impacted domestic demand for thermal coal. Specifically, thermal coal demand in the domestic electric power sector declined from 935 million tons in 2011 to 636 million tons in 2018 and coal has seen its share of the domestic electricity generation market reduce from 43% in 2011 to 31% in 2017.

In this period of declining demand, increased federal and state regulatory scrutiny significantly increased the cost of compliance. Changes to regulations surrounding health and safety, permitting and licensing requirements, environmental protection and the reclamation and restoration of mining properties along with increased enforcement of existing laws has had a significant impact, reducing mine productivity and increasing the cost of maintaining compliance.

The impact of the macro and regulatory environment is not isolated to the Debtors' performance. The entire U.S. mining complex was impacted by these events as evidence by the growing number of peer companies that have filed for bankruptcy over the course of the past 5 to 10 years. The entire industry either has gone through, or is currently going through, a period of financial distress and reorganization.

(b) Operational Issues Impacting Liquidity.

In addition to general industry pressure and downturn, the Debtors encountered a number of operational issues since 2017. Specifically, the Debtors have faced, among others, the following:

- In October 2017, Noble Group, the Debtors' former partner in MR Coal (the company's exclusive marketing partner prior to BJMS) informed the Debtors of its intention to exercise its put right and terminate its contractual relationship with the Debtors. Prior to this notification, MR Coal, at the direction of Noble Group, had started to unwind advances it had made to the Debtors under their operative agreements. These actions resulted in a significant reduction in liquidity for the Debtors.

- On October 5, 2017, the Commonwealth of Kentucky made sweeping changes to its workers' compensation laws, including increasing the compensation rate from 24% to 48% and shifting the burden of black lung claims entirely to insurance companies rather than a shared burden between the state and the insurance companies. The resulting increase in workers' compensation insurance rates cost the Debtors more than $20 million dollars and then led the Debtors to decide to become largely self-insured. The decision to become self-insured also had significant costs and required the Debtors to maintain an escrow account with $11 million at a negative impact to liquidity.

- In the second half of 2017, at the request of their lenders, the Debtors locked-in pricing for their projected 2018 metallurgical coal volumes earlier than would have otherwise been typical. Unfortunately, this was followed by a sharp rise in the benchmark price for metallurgical coal that negatively impacted 2018 revenue by $100 to $150 million.

- Various flooding events across the Midwest in 2019 severely impacted rail shipments from the Western Division's mining operations. Starting in March 2019, the Debtors experienced a material reduction in shipments by rail due to severe damage to the rail lines used to move the Debtors' coal. The flooding negatively impacted cash flow by an estimated $30 million.

(c) **The Debtors' Efforts to Address Liquidity Concerns.**

Dating back as far as 2014, the Debtors began taking numerous steps to proactively address the liquidity and other challenges they faced. Among others, the Debtors: (i) structurally refocused the Eastern Division to underground metallurgical coal mining through a series of acquisitions and the 2017 Transaction that created Blackjewel and idled legacy thermal assets at Revelation Energy; (ii) replaced the Noble Group and MR Coal with the BJMS joint venture with Javelin and Uniper that also provided a $50 million prepayment for future deliveries; (iii) reentered the thermal coal business by acquiring the productive Western Division assets from Contura; (iv) switched to a self-insured workers' compensation plan that saves approximately $30 million in premiums per year; and (v) sought out debt financing.

In April 2017, to provide working capital and interim financing until a comprehensive financing solution could be obtained, the Debtors began working with Jefferies LLC ("Jefferies") to locate a financing source. Jefferies' efforts ultimately resulted in the Debtors entering into the Riverstone Facility, which provided the Debtors with a total of $34 million, including contributions from Lime Rock Partners and Hoops.

(d) **Exhausting Liquidity and Financing Options.**

During the second half of 2018, the Debtors began a process to refinance the Riverstone Facility due to its impending maturity. The Debtors contacted a number of different parties but were unable to find a party willing to refinance the Riverstone Facility. As a result, on January 2, 2019, the Debtors and Riverstone agreed to extend the maturity of the Riverstone Facility by six months through July 17, 2019 (with the ability to receive a further six-month extension through January

17, 2020), in exchange for cash fees totaling 3% of the outstanding principal and the issuance of Series B Units for up to 4% of the equity value of Blackjewel.

In January 2019, concurrent with the extension of the Riverstone Facility, the Debtors began working with Jefferies to explore a sale or comprehensive refinancing option to provide additional liquidity and repay the Riverstone Facility and other outstanding debt. As this process was ongoing, on March 11, 2019, the Debtors became aware that they would not meet the leverage ratio negative covenant in the Riverstone Facility for the period ended December 31, 2018 and provided notice of that default to Riverstone. The existence of this default materially impacted the Debtors' ability to refinance the Riverstone Facility and cut-off their right to further extend the maturity date through January 17, 2020.

Notwithstanding these issues, the Debtors engaged with Riverstone in an effort to extend the Riverstone Facility's maturity date but were unable to come to an agreement. Given the Debtors' other liquidity challenges, the Debtors determined to engage a financial advisor and restructuring counsel in late June 2019 to advise on strategic alternatives including the possibility of an emergency chapter 11 filing.

As a result, on the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court to address the Debtors' debt obligations and evaluate restructuring options for the Debtors' capital structure.

ARTICLE V

DESCRIPTION AND HISTORY OF CHAPTER 11 CASES

5.1 *General Case Background.*

Each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on July 1, 2019 and July 24, 2019. On July 3, 2019 and July 31, 2019, the Bankruptcy Court entered orders [Docket Nos. 60 and 437] authorizing the joint administration of the Chapter 11 Cases, for procedural purposes only, under Case No. 19-30289 (BAK). The Honorable Frank W. Volk, United States Bankruptcy Judge for the Southern District of West Virginia presided over the Chapter 11 Cases until May 22, 2020, when the cases were assigned to the Honorable Benjamin A. Kahn, United States Bankruptcy Judge for the Middle District of North Carolina. The Debtors continued to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On July 3, 2019, the Office of the United States Trustee for Region 4, the District of West Virginia (the "U.S. Trustee") appointed the Official Committee of Unsecured Creditors (the "Committee") [Docket No. 46]. No request for the appointment of a trustee or examiner has been made in these chapter 11 Cases.

The following is a brief description of certain significant events that have occurred during the pendency of these Chapter 11 Cases.

5.2 ***Appointment of the Committee.***

The Committee was appointed by the U.S. Trustee pursuant to section 1102(a)(1) of the Bankruptcy Code on July 3, 2019 to represent the interests of the Debtors' unsecured creditors [Docket No. 46]. On July 10, 2019, the Committee filed an application seeking entry of an order authorizing the Committee to retain Whiteford, Taylor & Preston, LLP as counsel [Docket No. 144], which the Bankruptcy Court approved on August 13, 2019 [Docket No. 705]. On July 30, 2019, the Committee filed an application seeking entry of an order authorizing the Committee to retain Berkeley Research Group, LLC, as financial advisor [Docket No. 378], which the Bankruptcy Court approved on August 27, 2019 [Docket No. 922]. The initial members of the Committee were: (i) Walker Machinery Company: (ii) Jennmar Corporation of Virginia; (iii) CAM Mining, LLC; (iv) United Central Industrial Supply Company, LLC; and (v) Kentucky River Properties, LLC. United Central Industrial Supply Company, LLC has since resigned from the Committee.

5.3 ***Retention of Professionals.***

To assist them in carrying out their duties as debtors in possession, and to otherwise represent their interests in the Chapter 11 Cases, on July 9, 2019, the Debtors filed applications seeking entry of orders authorizing the Debtors to retain: (i) Supple Law Office, as local bankruptcy counsel [Docket No. 120]; (ii) Squire Patton Boggs (US) LLP, as lead counsel [Docket No. 122]; (iii) FTI Consulting, Inc., as their financial advisor [Docket No. 124]; (iv) Jefferies LLC, as their investment banker [Docket No. 126]; and (v) Prime Clerk, as their claims and noticing agent [Docket No. 128] and their administrative advisor [Docket No. 130]. The Bankruptcy Court entered orders approving each of the applications [Docket Nos. 700, 701, 702, 703, 704, and 815].

David J. Beckman of FTI Consulting, Inc. was initially retained as the Debtors' Chief Restructuring Officer. Additionally, at Riverstone's request and as a condition to providing debtor in possession financing, as more fully discussed below, Hoops resigned as CEO of the Debtors and Mr. Beckman was also named interim Chief Executive Officer.

Additionally, on July 9, 2019, the Debtors filed a motion seeking entry of an order authorizing the employment and compensation of professionals utilized in the ordinary course of business [Docket No. 112]. On August 13, 2019, the Bankruptcy Court entered an order [Docket No. 706] approving this motion.

On September 19, 2019, the Debtors filed a motion seeking entry of an order establishing compensation procedures for an orderly, regular process for the allowance and payment of compensation and reimbursement of expenses for attorneys and other professionals [Docket No. 1109] (the "Interim Compensation Motion"). On October 11, 2019, the Bankruptcy Court entered an order approving the Interim Compensation Motion [Docket No. 1216].

5.4 ***Employment Obligations.***

To retain as many of their employees as possible and to minimize the impact of the filings on the employees, on the Petition Date, the Debtors sought authority, but not direction, to pay certain pre-petition employee wage and benefit obligations [Docket No. 6] (the "Employee Wage Motion"). In the Employee Wage Motion, the Debtors requested, among other things, the authority to satisfy

certain of their pre-petition obligations to their current employees, reimburse employees for pre-petition business expenses, pay pre-petition payroll-related taxes and withholdings associated with the Debtors' employee wage claims and the employee benefit obligations, and continue employee benefit programs in place as of the Petition Date. On July 3, 2019 and August 9, 2019, the Bankruptcy Court entered orders granting interim and final approval of the Employee Wage Motion, respectively [Docket Nos. 59 and 626].

Despite the Debtors' initial intentions and the Court's authorization to make payments related to the prepetition wages, the circumstances of these cases prevented the Debtors from applying their limited funds towards satisfaction of the prepetition wages. Additionally, because the Debtors were unable to secure debtor in possession financing at the outset of the Chapter 11 Cases to sustain their operations, the Debtors suspended operations and furloughed almost all of their employees on the Petition Date. The Debtors subsequently called approximately 200 employees back to work. The Debtors also used the proceeds of certain sales and other transactions, in connection with various settlements with the Department of Labor (the "DOL"), as more fully described below, to pay a large portion of the prepetition wages due to their employees.

5.5 ***Employee Benefits Obligations.***

Debtors have several outstanding employee benefits obligations. A brief description of each is below.

(a) **Health Plan Claims**

Debtor, Revelation Energy, LLC was previously the sponsor of a self-insured health plan (the "Health Plan") administered by United HealthCare Services, Inc. ("UHSI") until the Debtors moved to terminate the Heath Plan as of August 31, 2019 (the "Termination Date"), pursuant to the *Emergency Motion of the Debtors to Reject and Terminate Health Insurance Plan With United Healthcare Services, Inc. and to Enter Into New Health Insurance Plan for Current Employees Pursuant to Sections 363 and 365 of the Bankruptcy Code* [Docket No. 879] (the "Termination Motion"). On August 30, 2019, the Bankruptcy Court entered an order granting the Termination Motion [Docket No. 968]. The Debtors contracted for new health insurance coverage for their current employees with UHSI effective as of September 1, 2019.

As described in the Termination Motion, the Health Plan covered employees and dependents in the following ten "Bill Groups":

- Bill Group 1- Revelation Energy LLC;
- Bill Group 2- JBLCO, LLC;
- Bill Group 3- Active Medical;
- Bill Group 4- Forrest Machine, LLC;
- Bill Group 5- Lone Mountain;
- Bill Group 6- Lexington Coal;
- Bill Group 7- Blackjewel LLC;
- Bill Group 8- Grand Patrician Resort LLC;
- Bill Group 9- Construction & Reclamation Services; and
- Bill Group 10- Prep Plant Solutions LLC.

Bill Groups 1, 5 and 7 are the groups that provided coverage to employees of the Debtors. All other Bill Groups represent non-debtor companies which, upon information and belief, are under the direct or indirect control of Hoops (the "Hoops Bill Groups").

When the Debtors filed the Termination Motion, UHSI reported that there were 4,589 unprocessed claims under the Health Plan, which represented billed charges of $3,101,900. As of May 5, 2020, this number has increased to 13,890 unprocessed claims representing billed charges of $14,983,826.14.

The Debtors have been working with the DOL and USHI to determine a solution to the unpaid claims. On January 21, 2020, the Debtors filed a Motion for an order temporarily prohibiting healthcare providers from direct billing and/or commencing any actions against current and former employees and their dependents or UHSI related to unpaid claims [Docket No. 1656] (the "Healthcare Motion"). On April 27, 2020, the Court entered an order prohibiting medical service providers from direct billing and/or commencing or continuing any judicial, administrative, or other proceeding against individuals covered under the health plan sponsored by Debtor Revelation Energy LLC, through and including August 27, 2020, related to the unprocessed claims accrued under the Health Plan through and including the August 31, 2019 [Docket No.1940]. Pursuant to a motion to further extend the temporary stay, on September 14, 2020, the Bankruptcy Court entered an order further extending the temporary stay through December 27, 2020 [Docket No. 2353].

(b) **Pension Plan Claims**

Debtor, Revelation Energy, LLC, entered into that certain Unit Purchase Agreement ("UPA") with Arch Coal, Inc. ("Arch Coal") dated July 21, 2017 (which closed in or about September 2017), pursuant to which Debtor Revelation Energy, LLC agreed to, among other things, assume the Cumberland River Coal Company Pension Plan for Bargaining Unit Employees (the "Pension Plan").

On November 22, 2019, the Pension Benefit Guaranty Corporation ("PBGC") filed a proof of claim with the Bankruptcy Court for $11,931,278 representing the estimated amount of the Pension Plan's unfunded benefit liabilities. On May 8, 2020, the PBGC issued a Notice of Determination under 29 U.S.C. § 1342(a) that Revelation Energy, LLC has not met the minimum funding standard required under section 412 of the Tax Code and will be unable to pay benefits when due, and that the Pension Plan should be terminated under 29 U.S.C. § 1342(c). Subsequently, Revelation Energy, LLC and the PBGC executed the Agreement for Appointment of Trustee and Termination of Plan on May 19, 2020, pursuant to which the Pension Plan will be deemed terminated effective September 30, 2019, and the PBGC will be appointed statutory trustee of the Pension Plan.

(c) **Colonial and Prudential Insurance Premiums**

The Debtors were parties to insurance policies with Prudential Insurance Company of America ("Prudential") and Colonial Life and Accident Insurance Company ("Colonial") that provided life insurance, accidental death and dismemberment insurance, long-term disability insurance, and critical illness and cancer insurance to the Debtors' employees and dependents. Both policies were terminated on October 31, 2019.

On November 4, 2019, Prudential filed a proof of claim with the Bankruptcy Court for $333,175.97. On November 4, 2019, and November 18, 2019, Colonial filed proofs of claims against the Debtors in the amounts of $134,200.79, and $101,816.03, respectively. The Debtors have partially satisfied these claims pursuant to agreements with Colonial and Prudential whereby the Debtors remitted certain outstanding employee withholdings in the amount of $48,822 to Prudential and $28,255 to Colonial [Docket Nos. 2064, 2150].

5.6 ***Continuing Supplier and Customer Relations.***

On the Petition Date, the Debtors filed a motion seeking entry of an order authorizing the Debtors to pay, in the ordinary course of business, pre-petition claims of certain critical vendors necessary to operate their businesses, which included coal transportation services, environmental testing, equipment maintenance, and security services [Docket No. 10] (the "Critical Vendor Motion"). On July 23, 2019, the Bankruptcy Court entered an order granting interim approval of the Critical Vendor Motion [Docket No. 283].

On July 30, 2019, the Committee filed an objection to the final relief on the Critical Vendor Motion asking the Bankruptcy Court to adjourn the hearing on the Critical Vendor Motion until a later date to allow the Debtors to complete the sale process. As of the date hereof, the Critical Vendor Motion has not been rescheduled for a hearing and the Bankruptcy Court has not entered an order granting final relief on the motion.

5.7 ***Cash Management System.***

The Debtors believed that disruption in the use of their cash management system would have severely and immediately impeded their ability to continue operating to the detriment of the Debtors' estates and all of their creditors. Accordingly, on the Petition Date, the Debtors filed a motion seeking entry of an order authorizing the Debtors to maintain their current cash management system, honor certain prepetition obligations related to the use of their cash management system, maintain their existing bank accounts and business forms, open new debtor-in-possession accounts, and continue intercompany transactions [Docket No. 8] (the "Cash Management Motion"). On July 4, 2019, and August 9, 2019, the Bankruptcy Court entered orders granting interim and final approval of the Cash Management Motion, respectively [Docket Nos. 72 and 625].

5.8 ***Utilities.***

On July 9, 2019, the Debtors filed a motion for an order: (a) determining that the Debtors' utility providers are adequately assured of future performance pursuant to certain procedures set forth therein; (b) approving the Debtors' proposed procedures governing a utility provider's requests for additional or different adequate assurance; and (c) prohibiting the Debtors' utility providers from altering, refusing, or discontinuing services on account of pre-petition amounts outstanding, if any, and on account of any perceived inadequacy of the Debtors' proposed adequate assurance [Docket No. 118] (the "Utilities Motion"). On July 23, 2019, and August 13, 2019, the Bankruptcy Court entered interim and final orders approving the Utilities Motion, respectively [Docket Nos. 284 and 708].

Certain parties, including Appalachian Power Company and Kentucky Power Company (d/b/a American Electric Power), Kentucky Utilities Company, and Powder River Energy Corporation, raised formal and informal objections to the Utilities Motion, which the Debtors resolved pursuant to certain agreed orders filed at Docket Nos. 793, 818, 863, 1041, and 1097.

5.9 ***Insurance Obligations.***

On July 9, 2019, the Debtors filed a motion seeking an order authorizing the Debtors to continue their pre-petition insurance coverage and maintain funding for their insurance brokers [Docket No. 139] (the "Insurance Motion"). The Bankruptcy Court entered interim [Docket No. 282] and final [Docket No. 627] orders approving the Insurance Motion on July 23, 2019, and August 9, 2019, respectively.

5.10 ***Tax Motions.***

On July 9, 2019, the Debtors filed a motion seeking entry of an order authorizing them to pay various prepetition severance, excise, use, franchise, property, environmental and safety taxes, and other taxes and fees to certain federal, state and local government agencies [Docket No. 114] (the "First Tax Motion"). On July 11, 2019, the Committee filed an objection to the Tax Motion asking the Bankruptcy Court to adjourn the hearing on the Tax Motion until a later date when the Committee has had a reasonable opportunity to analyze the tax payments due. As of the date hereof, the Tax Motion has not been rescheduled for a hearing and the Bankruptcy Court has not entered an order on the motion.

On March 13, 2020, the Debtors filed the *Motion of the Debtors for Entry on an Order Authorizing an Officer of the Debtors to Sign Certain Tax Returns* [Docket No. 1857] ("Second Tax Motion"), pursuant to which the Debtors requested authorization for the Debtors' current officers to execute and file certain outstanding tax returns. Despite the authority granted pursuant to the Second Tax Motion, the Debtors were unable to file the outstanding 2018 tax returns without cooperation from Hoops. On October 1, 2020, after confirming that no current officers of the Debtors could sign the outstanding tax returns, the Debtors filed a motion requesting that the Bankruptcy Court compel Hoops to sign the Debtors' partnership tax returns, corporate tax returns, and related state tax returns to permit the Debtors to file the same [Docket No. 2409] (the "Third Tax Motion"). The Third Tax Motion explains that the Debtors have been unable to file their completed 2018 tax returns because current officers lack the necessary knowledge of the Debtors' operations during the tax period to execute the outstanding tax filings and would be exposed to unreasonable liability for doing so. The Third Tax Motion is scheduled to be heard on November 6, 2020. The Debtors' 2019 tax returns are in the process of being completed this fall by a new accounting firm and will be filed as soon as reasonably practicable. Because the 2018 and 2019 taxes have not been filed, the total tax liability has not been determined and the amount of such liability may impact the feasibility and confirmability of the Plan.

5.11 ***Schedules and Statements.***

On the Petition Date, the Debtors filed a motion requesting entry of an order extending the time by which the Debtors must file their Schedules of Assets and Liabilities and Statements of Financial Affairs (collectively, the "Schedules") through and including August 30, 2019 [Docket

No. 4]. On July 22, 2019, the Bankruptcy Court granted the motion, but only extended the deadline to file Schedules through and including July 31, 2019 [Docket No. 281]. On July 30, 2019, the Debtors filed a second motion requesting a further extension of time to file their Schedules through and including August 21, 2019 [Docket No. 387], which the Bankruptcy Court granted on August 13, 2019 [Docket No. 698]. The following day, the Bankruptcy Court vacated its prior order and extended the deadline to file Schedules through and including August 14, 2019 [Docket No. 716]. On August 15, 2015, each Debtor filed with the Bankruptcy Court its Schedules [Docket Nos. 730–751]. On September 5, 25, and 26, 2019, Blackjewel filed amendments to its Schedules [Docket Nos. 995, 1136, 1140]. On September 5, 2019, Debtor Revelation Energy filed an amendment to its Schedules [Docket No. 994]. The Schedules are available electronically free of charge at the Case Website at https://cases.primeclerk.com/blackjewel.

5.12 ***Bar Dates.***

On September 19, 2019, the Debtors filed a motion seeking entry of an order establishing deadlines for filing proofs of claim against the Debtors (each, a "Bar Date") and approving the form and manner of notice of each Bar Date [Docket No. 1104] (the "Bar Date Motion"). On October 4, 2019, the Bankruptcy Court entered an order approving the Bar Date Motion [Docket No. 1188] and fixing the Bar Date to file proofs of claim for all creditors, including any Administrative Expense Claim for Administrative Expense Claims arising from the Petition Date through October 14, 2019, other than governmental units at 5:00 p.m. (prevailing Eastern Time) on November 4, 2019 and the Bar Date for governmental units at 5:00 p.m. (prevailing Eastern Time) on December 30, 2019.

5.13 ***Financing Motions.***

On the Petition Date, the Debtors filed a motion to obtain postpetition financing in the aggregate principal amount of $20,000,000, from Hoops and Clearwater [Doc. No. 12] (the "First DIP Motion"). As more fully stated on the record, the Debtors were unable to proceed with the relief requested in the First DIP Motion because United Bank denied Hoops and Clearwater access to the moneys necessary to fund the proposed debtor-in-possession financing. The First DIP Motion was subsequently withdrawn at Docket No. 235.

On July 2, 2019, the Debtors filed a supplemental emergency motion to obtain a two-step postpetition financing (the "Second DIP Motion") in the aggregate principal amount of approximately $35,000,000, comprised of a $20,000,000 loan from Hoops and Clearwater and approximately $15,000,000 from a third-party lender [Docket No. 36]. For reasons stated on the record at the hearing on July 2, 2019, the Bankruptcy Court denied the Second DIP Motion [Docket No. 436].

On July 3, 2019, the Debtors filed a motion to obtain interim postpetition financing in the aggregate commitment amount of $5,000,000 from Riverstone [Docket No. 47] (the "Third DIP Motion"). The goal of the interim financing was to allow the Debtors to secure and preserve the value of their assets, avoid the immediate conversion of the Chapter 11 Cases to cases under chapter 7, and permit the Debtors to continue to work collaboratively with their lenders and key stakeholders to maximize value and obtain additional financing. As a condition to extending such debtor-in-possession facility, Riverstone required Hoops and any members of his family to resign or otherwise be removed in all capacities from any position they held with the Debtors. Accordingly,

on July 3, 2019, Hoops, Jeffrey A. Hoops, II, and Jeremy A. Hoops, tendered their resignations. By order dated July 3, 2019, the Bankruptcy Court approved the Third DIP Motion on an interim basis [Docket Nos. 57 and 278] and on a final basis on August 13, 2019 [Docket No. 707]. Only $2 million of the $5 million commitment was advanced under the Third DIP Motion. As more fully discussed below, pursuant to the sale of the Western Assets to ESM, the Debtors and Riverstone settled all their respective claims, including Riverstone's claim for money loaned under the Third DIP Motion. Accordingly, the debt incurred by the Debtors under the Third DIP Motion has been extinguished.

On July 19, 2019, the Debtors filed a motion to obtain interim, junior secured debtor in possession financing in the aggregate principal amount of $2,900,000 (the "Junior DIP Loan") from certain funds managed or advised by (i) Highbridge Capital Management, LLC and (ii) Whitebox Advisors LLC (together, the "Junior DIP Lenders") [Docket No. 250] (the "Fourth DIP Motion"). On July 19, 2019, and August 26, 2019, the Bankruptcy Court entered interim and final orders approving the Fourth DIP Motion, respectively [Docket Nos. 259 and 918]. Pursuant to the sale of the Western Assets to ESM, the Junior DIP Lenders agreed to forever waive and release any and all rights they have to recover from the Debtors the principal and all accrued interest and fees under the Junior DIP Loan. Accordingly, the debt incurred by the Debtors under the Fourth DIP Motion has been extinguished.

5.14 ***Sale Process.***

Since the inception of these Chapter 11 Cases, the Debtors, with the assistance of Jefferies, and in consultation with their counsel and other advisors, investigated and analyzed a number of strategies to preserve and maximize the value of the Debtors' assets. The Debtors concluded that, under the circumstances, the only way to maximize the value of their assets for the benefit of their creditors was to conduct an expedited sale process for such assets.

(a) **Public Sales**

On July 25, 2019, the Debtors filed a motion (the "Sale Motion") for an order authorizing, among others things, the sale of substantially all of the Debtors' assets pursuant to certain bidding procedures. In connection with the bidding procedures, the Debtors sought to designate Contura as the Stalking Horse Purchaser for the Debtors' assets in the Western Division (the "Western Assets") and the assets associated with the mines commonly known as the Pax mines (the "Pax Assets"). On July 26, 2019, the Bankruptcy Court entered an order approving the sale process proposed by the Debtors and designating Contura as the stalking horse purchaser [Docket No. 356] (the "Bidding Procedures Order," and Schedule 1 thereto, the "Bidding Procedures").

In connection with its agreement to serve as the stalking horse purchaser and as approved by the Bidding Procedures Order, Contura agreed to fund a cash deposit equal to $8.1 million to the Debtors (the "Purchase Deposit"), to be applied to the purchase price of the Western Assets and the Pax Assets. On July 26, 2019, the Purchase Deposit and the proceeds thereof were made available to the Debtors pursuant to a budget attached to the Sale Motion.

Upon entry of the Bidding Procedures Order, the Debtors' advisors redoubled their efforts to contact potentially interested purchasers and solicit bids for the Debtors' assets. In total, forty

interested parties were contacted, twenty-two of those executed confidentiality agreements and received access to diligence materials, and seventeen parties (in addition to Contura) submitted binding bids for certain of the Debtors' assets.

On August 1, August 2, and August 3, 2019, the Debtors conducted an auction as contemplated by the Bidding Procedures. At the conclusion of the auction, the Debtors declared ten successful bidders for certain of the Debtors' assets. On August 5, 2019 and August 6, 2019, the Court held a hearing to consider approval of the sale of the Debtors' assets (the "Sale Hearing") to the successful bidders. At the conclusion of the Sale Hearing, the Court granted the requested relief, approved all of the proposed sales and overruled all objections.

The Bankruptcy Court subsequently entered orders independently approving the sale of certain of the Debtors' assets to Mark Energy, LLC [Docket No. 645], John Deere Construction and Forestry Company [Docket No. 666], Rhino Energy LLC [Docket No. 916], Sulzer Electro Mechanical Services (US), Inc. [Docket No. 919]; Tye Fork Coal Company, Inc. [Docket No. 920], Coking Coal, LLC [Docket No. 963]; Kopper Glo Mining LLC [Docket Nos. 1096 and 1100] and Dean-McAfee Lenders [Docket No. 1214].

Unique among the sales that were approved by the Bankruptcy Court at the Sale Hearing, the sale to Contura was conditioned on finalizing agreements between Contura and various regulatory agencies regarding the assignment of leases and the treatment of the claims of those agencies and the long term mining plan under which Contura would operate the Western Assets. The Debtors and Contura expected to close the sale of the Western Assets and the Pax Assets to Contura simultaneously. However, despite extensive negotiations with the necessary governmental authorities, the approvals required to close the sale of the Western Assets to Contura were not obtained as quickly as the parties hoped. The Debtors then elected to bifurcate the sale of the Western Assets and the Pax Assets and sought the Court's authority to close the sale of the Pax Assets to Contura separately [Docket No. 835]. In connection with the independent sale of the Pax Assets to Contura, the Debtors and Contura agreed that $5.05 million of the $8.1 million Purchase Deposit approved in connection with the Bidding Procedures Order would be applied towards the purchase price of the Pax Assets. On August 30, 2019, the Bankruptcy Court entered an order approving the sale of the Pax Assets to Contura [Docket No. 964].

(b) **Private Sales.**

Following the auction and the Sale Hearing, the Debtors and Jefferies extended further efforts to determine if there were buyers for the Debtors' remaining assets. As part of these efforts, the Debtors and Jefferies re-marketed the remaining assets and contacted thirty-four parties, fifteen of which executed confidentiality agreements.

(i) Black Mountain Sale

As a result of the additional marketing process, Black Mountain Resources, L.L.C. ("Black Mountain") submitted a bid – the only bid – for six mines in Leslie County, Kentucky within the Bell, Harlan and Leslie division, and the related preparation plants, assets and coal permits for fourteen permit locations (the "BMR Assets"). On September 27, 2019, the Debtors filed a motion for an order authorizing the private sale of the BMR Assets to Black Mountain [Docket No. 1146].

On October 2, 2019, the Bankruptcy Court held a hearing to consider the sale to Black Mountain. At the conclusion of the hearing, the Bankruptcy Court approved the proposed private sale and overruled all objections. On October 11, 2019, the Bankruptcy Court entered an order approving the sale of the BMR Assets to Black Mountain as well as the terms of the sale [Docket No. 1217].

(ii) ESM Sale

In light of the seemingly insurmountable challenges related to the sale of the Western Assets to Contura, the Debtors and their advisors, with Contura's consent, determined that it was in the best interests of the Debtors, their estates and their creditors to instead sell the Western Assets to Eagle Specialty Materials, LLC ("ESM") in a private sale without any further sale process or auction. To that end, on October 1, 2019, the Debtors filed a motion for an order authorizing the private sale of the Western Assets to ESM [Doc. No. 1157] (the "ESM Sale Motion").

On October 2, 2019, the Bankruptcy Court held a hearing to consider approval of the private sale to ESM and at the conclusion of the hearing, the Bankruptcy Court approved the proposed sale and overruled all objections. On October 4, 2019, the Bankruptcy Court entered an order approving the private sale to ESM [Docket No. 1187].

In connection with the sale to ESM, on October 7, 2019, the Debtors filed an emergency motion for an order authorizing the Debtors to transfer 135 of their remaining eastern mining permits (collectively, the "Eastern Permits") and all of the reclamation liabilities associated therewith to an affiliate of FM Coal, LLC or its designee – an affiliate of ESM – in order for ESM to obtain the required bonding for the Western Assets. On October 11, 2019, the Bankruptcy Court entered an order authorizing the transfer of the Eastern Permits [Docket No. 1219]. The sale to ESM closed on October 18, 2019.

(A) Related Settlements

As more fully described in the ESM Sale Motion, in connection with the negotiation of the sale of the Western Assets to ESM, the Debtors settled certain pressing, related issues with Riverstone, BJMS, the DOL, and the Junior DIP Lenders (collectively, the "Settlements") as further described below:

(1) Settlement with BJMS.

As part of the negotiations with respect to the ESM sale, the Debtors and BJMS agreed to a modified settlement (the "BJMS Settlement") of all remaining BJMS Claims against the Debtors. Specifically, the Debtors and BJMS agreed to provide for the payment by BJMS to the Debtors on the effective date of the sale agreement between the Debtors and ESM (the "ESM Effective Date") of: (i) $5.475 million in cash (to accommodate the Debtors' settlement of the "hot goods" issue described below); and (ii) the payment in full in cash of all outstanding accounts receivable generated by the Debtors through the sale of freshly mine western coal after September 27, 2019, and continuing through the ESM Effective Date. In exchange for these payments, the Debtors transferred their 30% ownership interest in BJMS to Javelin, as further described in the ESM sale agreement and the Debtors, BJMS and Javelin agreed to comprehensive mutual releases. The

payments to be made by BJMS to the Debtors are inclusive of the previously agreed upon payment by BJMS to the Debtors in the amount of $1.4 million.

On October 28, 2019, United Bank filed a motion seeking entry of order declaring that approximately $2.1 million of the funds that the Debtors received from the BJMS Settlement are payable to United Bank as a form of Adequate Protection [Docket No. 1285]. The Debtors strongly objected to United Bank's request, and both parties engaged in extensive briefing on the issue [Docket Nos. 1541, 1651, 1714, 1755, 1815]. On June 12, 2020, Judge Kahn held a telephonic hearing on the matter and took the matter under advisement.

(2) Settlement with DOL.

In order to resolve those certain "hot goods" issues with the DOL (including certain "hot goods" issues which are more fully described below), the Debtors agreed to use the proceeds of the BJMS Settlement to pay certain prepetition employee wages (the "DOL Settlement"). Specifically, the Debtors agreed to pay an agreed-upon amount to their former employees at various Eastern mines and an agreed-upon amount to their employees at certain Western mines, which resulted in the alleged "hot goods" being "cooled" and movable in interstate commerce. ESM and the Debtors further agreed that the Claims for unpaid wages of employees in the Western mines would be assumed and paid by ESM.

(3) Settlement with the Junior DIP Lenders.

As part of the ESM sale, the Junior DIP Lenders agreed to forever waive and release any and all rights they have to recover from the Debtors, including the principal and all accrued interest and fees under the loans they extended pursuant to the Junior DIP Loan to Blackjewel and Blackjewel Holdings L.L.C., as borrowers, and each Debtor affiliate, as guarantors, in the principal amount of $2,900,000 (the "Junior DIP Lender Settlement"). Thus, the Debtors were relieved of making any payments to the Junior DIP Lenders, which saved the estates $2,900,000 in principal amount, plus all accrued interest and fees. Upon the closing of the sale to ESM and the waiver by the Junior DIP Lenders of all their claims under the Junior DIP Loan, the Debtors and the estates agreed to release any and all claims or causes of action that they may have against the Junior DIP Lenders or their affiliates in connection with the Junior DIP Loan.

(4) Settlement with Riverstone.

In full and complete satisfaction of any and all Claims of any nature, type or extent, and whenever arising, that Riverstone had against the Debtors and their estates, affiliates, officers, directors, employees, professionals, agents and advisors (all of such claims being forever waived and released), the Debtors and Riverstone agreed to the following: (i) Riverstone shall be paid the total amount of $32 million in cash comprised of (a) $24 million in cash to be paid by ESM on the effective date of the ESM sale and (b) $8 million in cash to be paid by the Debtors on the effective date of the ESM sale; (ii) on the effective date of the ESM sale, the Debtors will assign to Riverstone through mutually agreeable documentation the Debtors' right, title and interest in that certain Royalty Agreement, issued to the Debtors by Rhino Energy, LLC in connection with the sale of certain of Sellers' assets in the amount of $250,000; (iii) the Debtors will pay to Riverstone the first two annual payments that the Debtors receive from Kopper Glo Mining, LLC ("Kopper

Glo"), in respect of that certain Royalty Agreement, issued to the Debtors by Kopper Glo, by directing such payments to be made to Riverstone directly by Kopper Glo; (iv) on the effective date of the ESM sale, Contura shall release its purported liens in any and all property comprising Riverstone's collateral and all right, title, and interest in and to any of the consideration paid to Riverstone pursuant to the settlement; (v) the Debtors shall release any and all claims that they or their estates may have against Riverstone, including any claims under sections 506(c), 547, 548, 549, 550, and 552; (vi) Riverstone shall be directed by the Debtors and the Committee to hold any amounts that would otherwise be distributable to Hoops and/or any of his affiliates pending further direction by the Debtors, the Committee or any successor representative of the Debtors' estates or further Court order; and (vii) Riverstone shall release any liens, security interests, mortgages, claims, interests and encumbrances it asserts against any property of the Debtors.

(iii) Monument Mining, Inc.

As a result of United Bank's marketing efforts, Monument Mining, Inc. submitted a bid for a certain highwall miner, encumbered by a lien in favor of United Bank. On January 24, 2020, the Debtors filed a motion for an order authorizing the private sale of the highwall miner to Monument Mining, Inc. [Docket No. 1688]. After a hearing on the motion, on March 3, 2020, the Bankruptcy Court entered an order approving the sale of the highwall miner to Monument Mining, Inc. [Docket No. 1833].

(iv) Ramaco Resources Land Holdings LLC

In furtherance of their efforts to relieve the Estates of reclamation obligations, on July 18, 2020, the Debtors filed a motion for an order authorizing the private sale of the two Article 3 mining permits and one NPDES permit located in McDowell County, West Virginia, and certain related property to Ramaco Resources Land Holdings LLC ("Ramaco") [Docket No. 2174]. After a hearing on the motion, on September 1, 2020, the Bankruptcy Court entered an order approving the sale of the permits and related property to Ramaco [Docket No. 2310].

(c) **De Minimis Asset Sales.**

Following the sale of substantially all of their marketable assets, on November 11, 2019, the Debtors filed a motion for entry of an order establishing procedures for the sale, transfer, or abandonment of certain obsolete, excess, no-value, burdensome, or non-core assets [Docket No. 1365] (the "De Minimis Motion"). On January 20, 2020, the Bankruptcy Court entered an order granting the De Minimis Motion and establishing procedures [Docket No. 1637] (the "De Minimis Order"). Pursuant to the De Minimis Order, the Debtors have sold certain de minimis assets, including, but not limited to mining permits and vehicles, to Jeffrey Hoops [Docket No. 1717]; Civil, LLC [Docket Nos. 1841 and 2066]; Bell Energy Partners, LLC [Docket No. 1882]; Keystone Properties, LLC [Docket No. 1883]; Alden Resources LLC [Docket No. 2211], David Osborne [Docket No. 2216]; 4th Gen Fuels, LLC [Docket No. 2225]; and Nally & Hamilton, Inc. [Docket No. 2251].

5.15 ***Hot Goods Dispute.***

(a) **Kentucky Action and Virginia Action.**

On August 5, 2019, and August 9, 2019, the DOL filed motions (the "FLSA Motions") with the Bankruptcy Court to halt the movement of coal located in Harland County, Kentucky and Raven and Honaker, Virginia (the "Disputed Coal") due to alleged violations of sections 6 and 7 of the Fair Labor Standards Act (the "FLSA") [Docket Nos. 550 and 648]. Specifically, the DOL asserted that the Disputed Coal was a product of uncompensated work and was therefore considered "hot goods" under the FLSA and could not be transported until the employee compensation issue was resolved. The FLSA Motions requested that (a) the coal be halted from being transported or transferred until the issue of the uncompensated work that produced the Disputed Coal is resolved, (b) any sale proceeds from the Disputed Coal be held in escrow and not be used until the issue of the uncompensated work that produced the coal is resolved, and (c) the DOL's actions under the FLSA not be subject to the automatic stay. On August 6, 2019, the Bankruptcy Court held a hearing on the FLSA Motions and orally granted the relief requested by the DOL in the FLSA Motions as it related to the Disputed Coal located in Kentucky [Docket No. 632]. On August 20, 2019, the Debtors executed a stipulation with the DOL and BJMS, the owner of the Disputed Coal, agreeing to the relief requested in the FLSA Motions as it related to the Disputed Coal located in Virginia [Docket No. 768].

On the same date, the DOL commenced civil action proceedings against the Debtors in (i) the United States District Court for the Western District of Virginia, Case No. 1:19-cv-00034-JPJ-PMS (the "Virginia Action") on August 20 and 21, 2019, and (ii) the United Stated District Court for the Eastern District of Kentucky, Case No. 6:19-cv-00207-CHB (the "Kentucky Action") on August 22, 2019, seeking injunctive relief in connection to the Disputed Coal. The Debtors promptly filed responses to each action, but both request for a preliminary injunction were initially granted. On August 23, 2019, the Debtors objected to the injunctive relief requested in the Virginia Action and the Kentucky Action and requested that the Bankruptcy Court authorize BJMS to transport the Disputed Coal to its end-customers [Docket No. 848]. After hearing oral arguments, the Bankruptcy Court held that an evidentiary hearing on the Disputed Coal was necessary to better develop the record before the Bankruptcy Court [Docket No. 960].

On September 4, 2019 and September 5, 2019, the Bankruptcy Court held an evidentiary hearing on the "hot goods" issue. On September 23, 2019, the Debtors, BJMS and the DOL submitted post-hearing briefs [Docket Nos. 1125, 1129] and proposed findings of fact and conclusion of law [Docket Nos. 1126, 1127] in the Bankruptcy Court and continued pleading practice in the Virginia Action and the Kentucky Action. As described above, in connection with the sale of the Western Assets to ESM, BJMS agreed to make a payment to the Debtors which was used, in part, to satisfy the unpaid prepetition employee wage claims addressed in the Kentucky Action and the Virginia Action. Upon closing that sale, the "hot goods" litigation was fully resolved and appropriate consent judgments were entered and the cases were closed.

(b) **West Virginia Action.**

In connection with the sale of the Pax Assets to Contura, the DOL asserted that the Debtors violated the FLSA by failing to make certain payments to the employees working at the Pax mine during

the period of June 10, 2019 through July 1, 2019. Because these wages were not paid, the DOL alleged that certain coal located at the Pax Mine was considered "hot goods" under the FLSA. The Debtors, the DOL, and Contura entered into good faith negotiations to resolve the issues raised by the DOL and the parties reached an agreement pursuant to which the Debtors agreed to pay the amount of approximately $175,529 in past due wages to certain past and current employees at the Pax Mine (the "Paid Employee Amount") and in turn, Contura agreed to reimburse the Debtors the Paid Employee Amount upon closing of the sale of the Pax Assets. On September 13, 2019, the Debtors issued checks to the applicable employees and remitted the associated taxes and withholdings that comprise the Paid Employee Amount. On September 16, 2019, the DOL commenced a civil action in the United States District Court for the Southern District of West Virginia (the "W.V. Court"), Case No. 3:19-cv-00667, and simultaneously filed a consent judgment memorializing the terms of the settlement among of the Debtors, Contura, and the DOL. On September 17, 2019, the Debtors and Contura closed the sale of the Pax Assets and Contura reimbursed the Paid Employee Amount to the Debtors. On October 7, 2019, the W.V. Court signed the consent judgment submitted by the parties and closed the case.

5.16 ***Claims Reconciliation.***

On December 13, 2019, the Debtors filed their first omnibus (non-substantive) objection to proofs of claim seeking entry of an order disallowing an expunging each claim identified in the scheduled attached thereto [Docket No. 1526]. On May 22, 2020, the Bankruptcy Court entered an order sustaining the Debtors' omnibus objection [Docket No. 2009]. The claims reconciliation process is ongoing.

5.17 ***Komatsu Litigation.***

On April 7, 2020, the Debtors filed a motion to reject certain Life Cycle Agreements with Joy Global Surface Mining Inc., a subsidiary of Komatsu Mining Corp. (together, "Komatsu") concerning two electric shovels previously utilized in the Debtors Wyoming operations [Docket No. 1890], which the Bankruptcy Court granted on May 21, 2020 [Docket No. 2007]. As a result, on May 7, 2020, Komatsu filed a motion seeking immediate determination of its prior motion for relief from the automatic stay concerning the two electric shovels at issue in the rejected Life Cycle Agreements [Docket No. 1962] (the "Stay Relief Motion").

On May 28, 2020, the Debtors and ESM filed responses in opposition to Komatsu's Stay Relief Motion [Docket Nos. 2027, 2032 - 2040]. ESM also filed a motion *in limine* to preclude Komatsu from introducing into evidence the summary of invoices and payment history, and calculations of early termination sums which it has disclosed as exhibits, because Komatsu has failed to produce the documents required by the underlying Life Cycle Management Agreements to support the summaries [Docket No. 2028]. On June 2, 2020, the Court held a status conference on Komatsu's motion for an immediate ruling on Komatsu's Stay Relief Motion and orally granted Komatsu relief from the automatic stay [Docket Nos. 2063, 2068].

In connection with the rejection of the Life Cycle Agreements, Komatsu filed two claims for rejection damages. Claim Nos. 1487 and 1496. The Debtors subsequently filed objections to the claims seeking to expunge and disallow claim number 1496, and to reduce claim number 1487 [Docket Nos. 2058, 2060]. To resolve the substantial litigation concerning the two electric shovels

and Komatsu's claims, the Debtors, Komatsu, and ESM entered into a settlement agreement pursuant to which ESM agreed to purchase the two shovels and pay Komatsu the sum of $2,528,884 in full satisfaction of its claims against the Debtors in connection with the Life Cycle Agreements and its liens on the two electric shovels. The Bankruptcy Court approved the settlement and the sale of the shovels to ESM by order entered on August 6, 2020 [Docket No. 2240].

5.18 ***Committee Disputes.***

On April 24, 2020, the Debtors filed a motion to further extend the periods during which the Debtors have the exclusive right to file a chapter 11 plan and solicit votes thereon [Docket No. 1936] (the "Third Exclusivity Extension Motion"). On the same day, the Committee filed a motion to convert these chapter 11 cases to cases under chapter 7 of the Bankruptcy Code [Docket No. 1938] (the "Conversion Motion"). Thereafter, the Committee filed objections to (i) the Third Exclusivity Extension Motion; (ii) the Debtors' application to employ ASK LLP, as special avoidance action counsel [Docket No. 1952] (the "ASK Application"); and (iii) the Debtors' motion for approval of settlement procedures and authority to settle certain classes of avoidance actions [Docket No. 1954] (the "Settlement Procedures Motion").

The Debtors subsequently filed responses to the Committee's objections and the Conversion Motion [Docket Nos. 1988, 2067, 2083]. In order to resolve the disputes between the Debtors and the Committee, the Debtors agreed to withdraw the ASK Application and Settlement Procedures Motion in exchange for the Committee's withdrawal of the Conversion Motion and its various objections. To that end, on July 23, 2020, Debtors filed notices to withdraw the ASK Application [Docket No. 2118] and the Settlement Procedures Motion procedures [Docket No. 2119]. The same day, the Committee filed notices to withdraw the objection to the Third Exclusivity Extension Motion [Docket No. 2120] and the Conversion Motion [Docket 2121].

5.19 ***Litigation Proceedings.***

On January 9, 2020, the Debtors filed a joint motion with the Committee seeking Bankruptcy Rule 2004 discovery from the Debtors' former President and Chief Executive Officer, Hoops, and the Hoops Parties [Docket No. 1611]. Specifically, the Debtors and the Committee were investigating, among other things, potential fraudulent transfers and other claims involving tens of millions of dollars of prepetition related party transactions between the Debtors, Hoops, and the Hoops Parties. The Debtors and the Committee also filed a joint motion for Rule 2004 discovery from United Bank, seeking further information regarding the investigation of potential claims involving the Hoops Parties and discovery for the purpose of investigating the basis for potential claims against United Bank [Docket No. 1723]. After months of effort, the Hoops Parties and United Bank were ordered to complete their discovery production, including critical components of electronically stored information, by May 29, 2020 [Docket Nos. 1863, 1948].

Based on their ongoing investigation and the results of partially but not fully completed Rule 2004 discovery, the Debtors anticipate bringing additional claims against Hoops, members of his family, and persons and entities associated with him, including those referred to as the "Hoops Parties." The anticipated additional claims include, but are not limited to: claims against Hoops for recharacterization of alleged loans to the Debtors that should properly be considered equity

contributions; claims against Hoops for breach of fiduciary duty and self-dealing; claims against other Hoops Parties for aiding and abetting breaches of fiduciary duty or, in some cases, breaching their own directly owed fiduciary duties, in connection with self-dealing or other unauthorized transactions; claims to recover actually or constructively fraudulent transfers of assets by the Debtors to entities associated with Hoops, including for above-market payments or profits based on payments by Debtors; claims to avoid obligations fraudulently incurred (actually or constructively) by the Debtors in favor of entities associated with Hoops; claims for Avoidance Actions, claims for conversion of the Debtors' assets, including unreturned equipment, and quasi-contractual or tort claims related to payments by or funds received from the Debtors. In addition to direct claims, the Debtors anticipate that entities associated with Hoops may be subsequent transferees of avoidable transfers, which the Debtors would seek to recover. This could include Clearwater Trust, Blackjewel Trust, Revelation Energy Trust, or other trusts associated with Mr. Hoops and his family. Additional claims could include those to pierce the corporate veil or to disregard the legal existence of purportedly distinct entities that were mere instrumentalities or alter egos of other entities, or where such separate existence otherwise should not be recognized under applicable law.

Potential defendants for additional claims include, but are not limited to: Hoops, his spouse Patricia Hoops, and his children, all of whom appear to have received improper or unauthorized transfers (or the benefits thereof) from Debtors, and many of whom held officer or representative positions with the Hoops Parties engaged in improper conduct; Triple H Real Estate, LLC and Lexington Coal Royalty Company, LLC, as the recipient of improper transfers of property from the Debtors and purported "overriding royalty" obligations by the Debtors; Construction and Reclamation Services, LLC, which appears to have received or benefitted from improper and unauthorized transfers from the Debtors; Aquatic Resources Management LLC, which contended during Bankruptcy Rule 2004 that it was a separate entity but which may be a party to undisclosed agreements or dealings to disguise an interest by Hoops. Additionally, the Debtors are investigating actions against legal, audit, and other professional advisors. The Debtors expect that the potential defendants will dispute the Debtors' contentions and defend any adversary proceeding commenced against them.

To date, the Debtors commenced the following adversary proceedings.

(a) **United Bank**

On June 1, 2020, the Debtors commenced an adversary proceeding against United Bank, seeking to recover damages for injury to the Debtors proximately caused by United Bank's improper actions and to equitably subordinate claims of United Bank against the Debtors' bankruptcy estates to remedy its inequitable conduct (the "United Bank Adversary Proceeding"). Among other claims, United Bank's intentional and improper interference with Debtors' postpetition financing arrangements required the Debtors to lay off hundreds of workers in an abrupt and unplanned manner, destroyed the opportunity for the Debtors to continue to operate and reorganize in an orderly manner, and caused tens of millions of dollars in damages. United Bank filed a motion to dismiss, which the Debtors opposed. The motion to dismiss was denied in part and granted in part, with leave for the Debtors to file an amended complaint. The Debtors filed their amended complaint on September 24, 2020. The United Bank Adversary Proceeding is being administered under case number 20-03007.

(b) **Clearwater Investment Holdings, LLC**

On June 11, 2020, the Debtors commenced an adversary proceeding against Clearwater Investment Holdings, LLC, seeking to avoid certain payments by the Debtors as constructively fraudulent transfers and/or preferences pursuant to sections 544, 547, 548, and 550 of the Bankruptcy Code (the "Clearwater Adversary Proceeding"). Clearwater's Answer was filed on July 10, 2020 and the Debtors are beginning the process of moving forward with discovery. The Clearwater Adversary Proceeding is being administered under case number 20-03008.

(c) **Lexington Coal Company, LLC**

On July 1, 2020, the Debtors commenced an adversary proceeding against Lexington Coal Company, LLC ("LCC"), seeking to recover damages for injuries sustained by the Debtors which were proximately caused by LCC's improper actions in using and profiting from Debtors' assets, including mining permits, inventory, and equipment, without providing adequate consideration in return (the "LCC Adversary Proceeding"). The LCC Adversary Proceeding also seeks recovery for fraudulent transfers made to and for the benefit of LCC pursuant to sections 548 and 550 of the Bankruptcy Code. The LCC Adversary Proceeding is being administered under case number 20-03012. On August 17, 2020, LCC filed its answer to the complaint, which included a demand for a jury trial. The same day, LCC moved to withdraw the reference to the Bankruptcy Court with respect to the LCC Adversary Proceeding. On August 18, 2020, the Debtors filed an objection to the motion for withdrawal of reference in the United States District Court for the Southern District of West Virginia, Case No. 20-00132.

The United Bank Adversary Proceeding, the Clearwater Adversary Proceeding, the LCC Adversary Proceeding, and any adversary proceeding commenced after the date hereof by the Debtors or the Liquidation Trustee seeking to recover transfers are referred to herein as the "Litigation Proceedings".

5.20 ***Mining Permits and Reclamation Disputes.***

The Debtors, in good faith, conducted an extensive sale process to maximize the value of the Debtors' estates and decrease environmental liability wherever possible. Much of the value obtained from the sales more specifically described above was in the form of assumed environmental obligations associated with the purchased mining permits. Specifically, each of the buyers that purchased mining/operating permits (the "Permit Purchasers") has a duty to procure new operating permits or transfer the permits from the Debtors' name to the Permit Purchasers' name. Additionally, the Permit Purchasers assumed all bonding and reclamation liabilities related to their purchased assets and all liabilities associated with such obligations.

Notwithstanding the obligation to acquire the permits and effectuate the permit transfers under the individual sale orders and applicable state laws, many of the Permit Purchasers failed to timely remit the necessary applications, complete the transfer process and adequately fulfill their obligations to the Debtors' estates. This lack of diligence on the Permit Purchasers' behalf created numerous issues with environmental groups and state agencies, including the Kentucky Energy and Environmental Cabinet (the "Cabinet") and frustrated the Debtors' efforts to both relieve the

estates of significant obligations and transfer the assets to Permit Purchasers that have committed to comply with environmental requirements under the permits.

On December 16, 2019, a group of environmental organizations filed a letter voicing their concerns regarding, among other things, maintenance of permitted areas pertaining to purchased permits [Docket No. 1534]. The letter prompted the Bankruptcy Court to direct the Debtors to file a response addressing the various inquiries regarding the status of permits and environmental matters, which the Debtors filed on February 5, 2020 [Docket No. 1742]. At the Bankruptcy Court's request, on February 26, 2020, the Debtors notified each Permit Purchaser by letter of (a) the Bankruptcy Court's request to file a schedule identifying the Permit Purchasers and the current status of the permit transfer process, (b) the Debtors' demand that purchasers immediately complete the transfer process, and (c) the possible repercussions for failing to complete such transfers. The Debtors prepared a permit schedule with all responsive information and filed a copy of the permit schedule with the Court on March 5, 2020 [Docket No. 1842].

On June 16, 2020, the Cabinet filed a motion seeking to compel the Debtors to bring all Kentucky mining and KPDES permits into compliance with state environmental laws [Docket No. 2079] ("Kentucky's Motion to Compel"). The following day, the Powder River Basin Resource Council, Kanawha Forest Coalition Kentuckians for the Commonwealth, Citizens Coal Council, Appalachian Voice, Appalachian Citizens' Law Center, Kentucky Resources Council, and Sierra Club filed a Letter in support of Kentucky's Motion to Compel [Docket No. 2084]. On June 23, 2020, the Debtors filed an objection to Kentucky's Motion to Compel, citing their ongoing efforts to transfers their permits to financially capable parties and the procedural deficiencies in Kentucky's Motion to Compel [Docket No. 2122].

The Debtors further advanced their efforts to reduce their reclamation liability by filing a motion to compel Permit Purchasers to immediately take all necessary steps to complete the permit transfer process [Docket No. 2147] (the "Debtors' Motion to Compel"). Permit Purchasers ESM, Rhino Energy LLC, Kopper Glo, and LCC filed objections to the Debtors' Motion to Compel, disputing, among other things, liability for specified permits due to inconsistent sales of overlapping permits and real property to different purchasers. After various intermediary orders directing Permit Purchasers to file reports detailing all actions taken to date to effectuate the transfer of their corresponding purchased permits and explaining why the transfers of their corresponding permits have not been completed, the Bankruptcy Court held an evidentiary hearing on September 10, 2020 to consider the Debtors' Motion to Compel and the Kentucky's Motion to Compel.

Based on the filings and evidence presented, including the various status reports of the Permit Purchasers, status reports of the Debtors and the Cabinet, and the testimony and exhibits introduced at the September 10 hearing, the Court determined that while progress has been made, additional actions (including actions within the control of the Permit Purchasers) were necessary to complete the transfers of permits and associated environmental obligations as required by the Court's prior orders approving the terms of sale agreements between the Permit Purchasers and Debtors. The Bankruptcy Court directed the Debtors, in consultation with the Permit Purchasers to submit a proposed order memorializing the Bankruptcy Court's holdings, which order has not been entered as of the filing of this Disclosure Statement.

To address the remaining Reclamation Obligations, the Plan contemplates the establishment of the Reclamation Trust as more fully described in section 7.9 below. The Cabinet contends that the Reclamation Trust is insufficient to satisfy all the Debtors' Reclamation Obligations and that any excess amounts are entitled to administrative priority. The Debtors dispute both of these contentions. To the extent any non-bonded reclamation claims are determined to be entitled to administrative priority, the Plan may not be feasible.

5.21 ***WARN Action and Settlement***

On September 1, 2020, the Debtors filed in the WARN Adversary Proceedings, and the Bankruptcy Case, a *Joint Motion and Memorandum of Law in Support of Defendants and Proposed Class Representatives, Pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rules 7023 and 9019 to: (I) Approve the Settlement Agreement Pursuant to Bankruptcy Rule 9019, (II) Preliminarily Approve the Settlement Agreement Pursuant to Bankruptcy Rule 7023, (III) Certify the Class for Settlement Purposes, Including the Appointment of Class Counsel and the Class Representatives, (IV) Approve the Form and Manner of Notice to Class Members of the Settlement, (V) Schedule a Fairness Hearing to Consider Final Approval of the Settlement Agreement, (VI) Finally Approve the Settlement Agreement Following the Fairness Hearing, and (VII) Grant Related Relief* (the "WARN Motion"), seeking approval of a Settlement Agreement dated as of September 1, 2020 (the "Settlement")[9] by and between Blackjewel L.L.C. and Revelation Energy, LLC (together, the "Debtor-Defendants"), and Lexington Coal Co., LLC, Jeff Hoops, Sr. and Jeffery A. Hoops, II (together, the "Non-Debtor Defendants," and collectively with the Debtor-Defendants, the "Defendants") on the one hand, and David Engelbrecht, Josiah Williamston, Gregory Mefford, Shawn Abner, Jacob Helton, and Billy Hatton (collectively, the "Plaintiffs" or "Class Representatives"), on behalf of themselves and similarly situated class members (together with the Class Representatives, the "Class Members" or the "Class"), on the other hand.

The WARN Motion will initially be heard by the Bankruptcy Court on October 9, 2020 at 9:30 a.m. (Prevailing Eastern Time) and any response to the WARN Motion must be filed and served no later than October 2, 2020 at 11:59 p.m. (Prevailing Eastern Time).

Prior to the Petition Date, the Debtors employed approximately 1,700 employees, both hourly and salaried in their business operations. The Plaintiffs contend that, on or about July 1, 2019, and thereafter, the Debtors terminated the employment of Plaintiffs and most of the workforce who worked at the Debtors' facilities in the Central Appalachian Coal Basin in West Virginia, Virginia and Kentucky (the "Eastern Division," encompassing approximately 1,100 employees), and in the Powder River Basin in Wyoming (the "Western Division," encompassing approximately 600 employees).

On July 9, 2019, the Plaintiffs filed their Class Action Adversary Proceeding Complaints[10] (as amended, the "WARN Action"), against the Defendants, in which the Plaintiffs asserted a class

[9] In the event the terms of this summary and the Settlement contradict each other, the terms of the Settlement will prevail.

[10] The adversary proceedings, which have been consolidated for the purposes of the Settlement (the "Adversary Proceedings") are: *David Engelbrecht, Josiah Williamston and Gregory Mefford, on their own behalf and on behalf of all other persons similarly situated v. Blackjewel, LLC*; Adversary Proceeding No. 19-ap-3002 and *Shawn Abner,*

action claim under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 et seq. (the "WARN Act") alleging that the Defendants, as a single employer, violated the WARN Act by implementing alleged plant closings or mass layoffs, without providing a sixty days advance written notice thereof.

The Class Representatives further asserted that, as a consequence of this alleged failure, the Class Members have a claim against the Defendants for damages for the alleged sixty day violation period. The WARN Action also includes wage and hour and other employment and employee benefits-related claims for the putative class members. The Defendants deny the allegations described above.

On September 20, 2019, the Bankruptcy Court entered an order for the parties to the Settlement (the "Parties") to commence mediation with Magistrate Judge Omar Aboulhosn [D.I. 17, Case No. 19-ap-03002]. On October 25, 2019, the Debtor-Defendants provided the Plaintiffs with relevant wage information concerning the hourly and salaried employees whose employment Plaintiffs contend was terminated by the Debtors. On November 4, 2019, the Parties mediated this matter before Magistrate Judge Omar Aboulhosn and although the WARN Action was not resolved during the mediation, the Parties have been working since that date toward a resolution of the WARN Action. Following extended settlement negotiations, conducted in good faith and at arms' length, on or about March 3, 2020, the Parties reached agreement on a compromise that resolved the WARN Action, according to the terms set forth in the Settlement.

The Settlement provides that, upon the effective date of the Settlement (the "WARN Effective Date"), the Class shall be awarded (a) an allowed priority claim jointly and severally against the Debtors, in the amount set forth on Schedule 1 to the Settlement, pursuant to 11 U.S.C. § 507(a)(4) and (a)(5) of the Bankruptcy Code, equal to sixty percent (60%) of sixty (60) days' of wages and benefits for each Class Member, in the aggregate amount of $14,630,825.63,[11] and an allowed priority wage claim under 11 U.S.C. § 507(a)(4) of the Bankruptcy Code in the aggregate amount of $2,711,494.11 for up to eight (8) days of pay for each Class member in resolution of their wage claims (together, the "Allowed Bankruptcy WARN and Wage Claims" as defined in the Settlement), which amount shall be subject to the statutory cap in the amount of $13,650.00 per employee pursuant to 11 U.S.C. § 507(a)(4) of the Bankruptcy Code (the "Statutory Cap"). To the extent any Class Member's Allowed Bankruptcy WARN and Wage Claims exceed the Statutory Cap, such claims will be deemed and treated as general unsecured claims; and (b) a cash payment (the "Cash Payment" as defined in the Settlement) from the Non-Debtor Defendants totaling $125,000 ($75,000 to be paid by Jeff Hoops, Sr. and Jeffery A. Hoops, II, jointly and severally, with the remaining $50,000 to be paid by Lexington Coal Co., LLC).

The distributions from the Debtors' estates (the "Estates" as defined in the Settlement) on account of the Allowed Bankruptcy WARN and Wage Claims (the "Estates Distribution Payments" as

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Jacob Helton and Billy Hatton individually and on behalf of others similarly situated v. Blackjewel, LLC, Revelation Energy, LLC, Lexington Coal Co., LLC, Jeff Hoops, Sr., Jeffery A. Hoops, II, Adversary Proceeding No. 19-ap-03003.

[11] Subject to the Statutory Cap, as defined below, for employees who had a wage garnishment for domestic support, the garnished sums will be treated as a priority claim under 11 U.S.C. § 507(a)(1) of the Bankruptcy Code.

defined in the Settlement) will be made by the Debtors in accordance with the priority scheme established by the Bankruptcy Code to a qualified settlement fund to be established by Class counsel (the "Class Counsel") in conformity with Tax Code § 468B (the "Qualified Settlement Fund") pursuant to written instructions to be provided by Class Counsel. The Class acknowledges that the Allowed Bankruptcy WARN and Wage Claims is an allowed claim to be paid in accordance with the priority scheme established by the Bankruptcy Code and that such claim may or may not be paid depending on the distributions available to creditors of the Debtors' Estates and may not be paid or funded in full.

The Cash Payment shall be made via wire transfer by the Non-Debtor Defendants within five (5) business days of the WARN Effective Date to the Qualified Settlement Fund pursuant to written instructions to be provided by Class Counsel. The name of the Qualified Settlement Fund shall be *Engelbrecht v. Blackjewel QSF*, and Class Counsel or the Administrator of the Qualified Settlement Fund shall provide the Defendants with a W-9 form for the Qualified Settlement Fund to enable the Estates Distribution Payments and the Cash Payment, respectively to the Qualified Settlement Fund.

The other essential terms of the Settlement are as follows:

i. The Class will be certified for settlement purposes only. The Class will be comprised of all persons who were employed by the Debtors at facilities located in the Eastern Division and the Western Division and who ceased working for the Debtors on or after July 1, 2019 solely, and who do not file a timely request to opt out of the Class. The Class excludes the Debtors' employees who were brought back to work by the Debtors between the dates of July 1, 2019 and November 4, 2019, a list of whom is attached to the Settlement as Exhibit C.

ii. The Debtors represent that, to the best of their knowledge, information and belief and based solely upon the Debtors' books and records, all of the former employees (along with their last known addresses and wage information) who are Class Members are listed on Schedule 1 to the Settlement.

iii. Lankenau & Miller, LLP, The Gardner Firm, P.C., Petsonk PLLC, Mountain State Justice, Inc. and Pillersdorf, DeRossett and Lane Law Offices shall be appointed Class Counsel for the Class created under the Settlement.

iv. David Engelbrecht, Josiah Williamston, Gregory Mefford, Shawn Abner, Jacob Helton, and Billy Hatton shall be appointed Class Representatives for the Class created under the Settlement.

v. The Settlement shall become effective upon the date on which the Final Settlement Order, as defined in the Settlement, becomes a "Final Order". The Final Settlement Order shall become a Final Order when the time for taking an appeal has expired or, in the event an appeal has been taken, the day the Final Settlement Order has been affirmed with no further right of appeal.

vi. The Debtors agree to provide Class Counsel with updates every six (6) months as to (i) the amount of funds in the Debtors' Estates as of such date, (ii) the amount of outstanding

claims asserted by creditors holding secured and administrative claims, and (iii) any potential recovery the Estates may obtain as of such date.

vii. The Plaintiffs acknowledge that the payment of the Allowed Bankruptcy WARN and Wage Claims may not be made as of the effective date of a proposed plan, if any, but will be paid if and when money comes to the Estates in accordance with the priority scheme established by the Bankruptcy Code. The Plaintiffs also agree that they will support any plan proposed by the Debtors which adheres to, and does not violate, the priority rules of the Bankruptcy Code.

viii. Class Counsel shall act as the trustee of the Qualified Settlement Fund. Class Counsel shall cause each Class Member's distribution to be paid from the Qualified Settlement Fund, and shall transmit distributions via first class U.S. Mail to the Class Members at their last known address as indicated on Schedule 1 to the Settlement (or to such other address as the Class Members may indicate to Class Counsel or which Class Counsel may locate), in accordance with applicable law. By accepting his or her portion of the Qualified Settlement Fund, each Class Member agrees that he or she will be solely responsible for any and all tax liabilities stemming from the payment of his or her claim under the Settlement. The Debtors and Plaintiffs agree that the Estates Distribution Payments shall be the only payments to be made by the Debtors under the Settlement. The Non-Debtor Defendants and Plaintiffs agree that the Cash Payment shall be the only payment to be made by the Non-Debtor Defendants under the Settlement. Under no circumstances shall the Debtors or their Estates or Non-Debtor Defendants be required under the Settlement to pay any sums or other consideration in addition to the Estates Distribution Payments or the Cash Payment, respectively, for any purpose whatsoever.

ix. In the event the amount of the Estates Distribution Payments is sufficient to make a full payment on the Allowed Bankruptcy WARN and Wage Claims, the total amount distributed to each Class Member on the Allowed Bankruptcy WARN and Wage Claims shall equal the amount listed on Schedule 1 to the Settlement for those claims. In the event the amount of the Allowed Bankruptcy WARN and Wage Claims is greater than the Estates Distribution Payments, the Class Members' distributions shall be reduced on a *pro rata* basis so all Class Members receive an equal percentage of the Estates Distribution Payments. For the avoidance of doubt, the Class Counsel's Fees, Class Counsel's Expenses and the Class Representative Service Payments are payable solely out of the Qualified Settlement Fund, consistent with the terms of the Settlement, and such fees, expenses and payments are included in the amount of the Allowed Bankruptcy WARN and Wage Claims as set forth in Schedule 1 to the Settlement and not in addition to such amount.

x. Upon the WARN Effective Date, any and all individual claims asserted by Class Members against the Debtors related to the claims set forth in the WARN Action shall be deemed satisfied and expunged from the Debtors claims register, and payment on account of such claims shall be limited solely to the Estates Distribution Payments and Cash Payment provided for in the Settlement. The Class Members agree that any such "Released Claims" as defined in the Settlement, shall be deemed waived without need for further court order. Proofs of claim filed by individuals who choose to timely opt-out of the WARN Class shall be unaffected by the release contained in the Settlement.

xi. Class Counsel shall be responsible for the production and mailing of all notices required to be provided to the Class Members (the "Class Notice"), the cost of which shall be paid solely from the Qualified Settlement Fund. The Class Notice shall be mailed within five business days following entry of the order certifying the Class for settlement purposes and preliminarily approving the Settlement. The address of Class Counsel will be used as the return address for the Class Notice, and Class Counsel will respond to all inquiries of the Class arising from or related to the Settlement. Class Counsel may retain the services of a settlement administrator (the "Administrator") to perform this service and other services related to the administration of the Qualified Settlement Fund, and the costs of the Administrator acting in this capacity, if applicable, may be deducted from the Qualified Settlement Fund.

xii. The Class Representatives shall receive an aggregate one-time payment from the first distribution from the Qualified Settlement Fund of $30,000, to be allocated as follows: $5,000 each to David Engelbrecht, Josiah Williamston, Gregory Mefford, Shawn Abner, Jacob Helton, and Billy Hatton for their service in this matter (together, the "Class Representative Service Payments").[12] Class Counsel shall distribute this payment to the Class Representatives, in addition to each Class Representative's individualized disbursements on account of the Settlement payments contemplated therein. Class Counsel's Fees will not be deducted from the Class Representative Service Payments.

xiii. Class Counsel is entitled to attorneys' fees ("Class Counsel's Fees") in the amount of one-third (1/3) of each distribution on the Allowed Bankruptcy WARN and Wage Claims and Cash Payment, net of the one-time $30,000 aggregate payment for Class Representative Service Payments. In addition, Class Counsel is entitled to its litigation expenses (including costs associated with the production and mailing of the Class Notice and the administration of the Settlement, estimated to be approximately $75,000) ("Class Counsel's Expenses"). Class Counsel's Fees and Class Counsel's Expenses, as well as the Representative Service Payments, shall be paid exclusively by the Qualified Settlement Fund. Class Counsel's Fees and Class Counsel's Expenses shall constitute payment in full for the Class Counsel's work and expenses in connection with this matter.

xiv. Class Counsel or the Administrator shall bear the responsibility of the preparation of the Class Notices. The Class Notice, which shall include an opt-out notice form ("Opt-Out Notice Form"), shall be in substantially the form annexed to the Settlement as Exhibit D or such substantially similar form as may be approved by the Bankruptcy Court. In the event that a Class Notice is returned as undeliverable, Class Counsel shall mail the Class Notice to the corrected address of the intended Class Member recipient as may be determined by Class Counsel through a search of a national database or as may otherwise be obtained by the Parties. The Class Notice shall contain the following information, which shall be individualized for each Class Member:

a. That each Class Member has the right to opt out of the Class and preserve all of his or her rights, if any, against the Defendants, including the Released

[12] The Class Representative Service Payments shall have no effect on the priority amounts available to the Class Representatives for their individualized Allowed Bankruptcy WARN and Wage Claims.

Claims (all such persons timely electing to opt out of the Class, the "Opt-Outs");

b. That the Settlement shall become effective only if it is finally approved by the Bankruptcy Court under Rules 7023 and Rule 9019 of the Federal Rules of Bankruptcy Procedure, and Rule 23 of the Federal Rules of Civil Procedure, as made applicable by Rule 7023 of the Federal Rules of Bankruptcy Procedure;

c. That, if so approved, the Settlement shall be effective as to all Class Members who did not timely elect to opt out of the Class;

d. The projected net dollar amounts such Class Member would receive under the Settlement, as shown on Schedule 1, assuming full payments of the Estates Distribution Payments (as defined in the Settlement) and Cash Payment (as defined in the Settlement);

e. That the Estates Distribution Payments may or may not equal the Allowed Bankruptcy WARN and Wage Claims depending on various factors and circumstances in the Bankruptcy Case;

f. That each Class Member who does not opt out has the right to object to the Settlement either in person or through counsel and be heard at the Fairness Hearing;

g. That all Released Claims (as defined in the Settlement) of a Class Member (other than claims with respect to amounts to be paid under the terms of the Settlement) shall be waived and any individual claim of Class Members against the Debtors related to the claims made in the WARN Action shall be deemed satisfied and expunged from the applicable claims register maintained by the Bankruptcy Court, and that no person, including the Class Member, shall be entitled to any further distribution thereon.

The Settlement shall become effective only if it is approved by a Final Order entered by the Bankruptcy Court.

On October 2, 2020, the DOL filed an objection to the WARN Motion [Docket No. 2417] (the "WARN Objection"). According to the WARN Objection and statements made during the hearing on October 15, 2020, by counsel to the DOL, the DOL's position with respect to the Settlement is the following (the "DOL Statement"):

> *The Settlement provides that claims that would be entitled to be paid as Administrative Expenses will be reduced to lower priority "Other Priority Claims" and that these Other Priority Claims will be limited to a maximum of $13,650 per Class Member regardless of the amount of a Class Members' unpaid medical expenses or 401(k) plan claims. These maximum distributions would then be reduced by 1/3 to pay the fees of Class Counsel.*

The Debtors disagree with the characterizations in the DOL Statement.

ARTICLE VI

REASONS FOR THE SOLICITATION; RECOMMENDATION

Chapter 11 of the Bankruptcy Code provides that unless the terms of section 1129(b) of the Bankruptcy Code are satisfied, for the Bankruptcy Court to confirm the Plan, the holders of Claims in each Class of Impaired Claims entitled to vote on the Plan must accept the Plan by the requisite majorities set forth in the Bankruptcy Code. An Impaired Class of Claims shall have accepted the Plan if (a) the holders of at least two-thirds in amount of the Claims in such Class actually voting on the Plan have voted to accept it, and (b) more than one-half in number of the holders of Claims in such Class actually voting on the Plan have voted to accept it (such votes, the "**Requisite Acceptances**").

In view of the significant benefits to be attained by the Debtors and their creditors if the Plan is consummated, the Debtors recommend that all holders of Claims entitled to vote to accept the Plan do so. The Debtors reached this decision after considering available alternatives to the Plan and their likely effect on the Debtors' creditors and other stakeholders. These alternatives included liquidation of the Debtors under chapter 7 of the Bankruptcy Code or a dismissal of the Chapter 11 Cases. The Debtors determined, after consulting with their legal and financial advisors, that the Plan, if consummated, will maximize the value of their estates for all stakeholders, as compared to any other strategy or a liquidation under chapter 7. For all of these reasons, the Debtors support the Plan and urge the holders of Claims entitled to vote on the Plan to accept and support it.

ARTICLE VII

THE PLAN

THE FOLLOWING IS A SUMMARY OF SOME OF THE SIGNIFICANT ELEMENTS OF THE PLAN. THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED INFORMATION SET FORTH IN THE PLAN AND THE EXHIBITS AND SCHEDULES THERETO.

7.1 *Overview of Chapter 11.*

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor is authorized to restructure or liquidate its business for the benefit of itself, its creditors and its equity interest holders. In addition to permitting the rehabilitation or liquidation of a debtor, another goal of chapter 11 is to promote equality of treatment for similarly situated creditors and similarly situated equity interest holders with respect to the distribution of a debtor's assets.

The commencement of a chapter 11 case creates an estate that comprises of all of the legal and equitable interests of the debtor as of the bankruptcy filing date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

The consummation of a chapter 11 plan is the principal objective of a chapter 11 case. A chapter 11 plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a chapter 11 plan by a bankruptcy court makes that plan binding upon the debtor, any issuer of

securities under the plan, any person acquiring property under the plan and any creditor or equity interest holder of the debtor. Subject to certain limited exceptions, the order approving confirmation of a plan discharges or releases a debtor from any debt that arose prior to the date of confirmation of the plan and, if applicable, substitutes them for the obligations specified under the confirmed plan.

In general, a chapter 11 plan of liquidation: (a) divides claims and equity interests into separate classes, (b) specifies the property, if any, that each class is to receive under the plan, (c) details the wind-up of the debtor, and (d) contains other provisions necessary to the liquidation of the debtor that are required or permitted by the Bankruptcy Code.

Pursuant to section 1125 of the Bankruptcy Code, acceptance or rejection of a chapter 11 plan may only be solicited after the commencement of a chapter 11 case upon transmission to holders of a claim a plan and written disclosure statement containing adequate information. Under section 1125(a) of the Bankruptcy Code, "adequate information" is information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding the chapter 11 plan. To satisfy the applicable disclosure requirements, the Debtors submit this Disclosure Statement to holders of Claims that are Impaired and not deemed to have rejected the Plan.

7.2 *Purpose of the Plan.*

The Debtors are proposing the Plan over the alternative of converting the Debtors' bankruptcy cases to chapter 7 of the Bankruptcy Code because the Debtors believe that (i) the Plan provides a more orderly liquidation and a greater recovery to creditors than a chapter 7 liquidation, and (ii) the Plan avoids unnecessary costs to the Debtors' estates which would accrue should the Debtors' bankruptcy case be converted to chapter 7 of the Bankruptcy Code.

7.3 *Acceptance or Rejection of the Plan; Effect of Rejection by One or More Classes of Claims or Interests.*

(a) Classes Entitled To Vote.

Classes 1, 2, and 3 are Impaired and entitled to vote to accept or reject the Plan.

(b) Tabulation of Votes on a Non-Consolidated Basis.

All votes on the Plan shall be tabulated on a non-consolidated basis by Class and by Debtor for the purpose of determining whether the Plan satisfies sections 1129(a)(8) and (10) of the Bankruptcy Code. Notwithstanding the foregoing, the Debtors reserve the right to seek to substantively consolidate any two or more Debtors; *provided*, *however*, that such substantive consolidation does not materially and adversely impact the amount of the Plan Distributions to any Person.

(c) Acceptance by Impaired Class.

An Impaired Class of Claims shall have accepted the Plan if, not counting the vote of any holder designated under section 1126(e) of the Bankruptcy Code, (a) the holders of at least two-thirds in dollar amount of the Allowed Claims actually voting in such Class have voted to accept the Plan

and (b) the holders of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

(d) **Elimination of Vacant Classes.**

To the extent applicable, any Class that does not contain any Allowed Claims, Allowed Interests, or Claims or Interests temporarily allowed for voting purposes under Bankruptcy Rule 3018 as of the date of commencement of the Confirmation Hearing, for all Debtors or with respect to any particular Debtor, shall be deemed to have been eliminated from the Plan for all Debtors or for such particular Debtor, as applicable, for purposes of (a) voting to accept or reject the Plan and (b) determining whether such Class has accepted or rejected the Plan pursuant to section 1129(a)(8) of the Bankruptcy Code.

(e) **Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code or "Cramdown."**

Because certain Classes are deemed to have rejected the Plan, the Debtors will request confirmation of the Plan, as it may be modified and amended from time to time, under section 1129(b) of the Bankruptcy Code with respect to such Classes. Subject to Sections 13.2 and 13.3 of the Plan, the Debtors reserve the right (i) to alter, amend, modify, revoke, or withdraw the Plan or any Plan Document to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary and (ii) to request confirmation of the Plan, as it may be modified, supplemented, or amended from time to time, with respect to any Class that affirmatively votes to reject the Plan.

7.4 ***Means for Implementation.***

(a) **Corporate Existence.**

(i) Upon the entry of the Confirmation Order by the Bankruptcy Court, all matters provided for under the Plan involving the corporate structure of the Debtors will be deemed authorized and approved without any requirement of further action by the Debtors, the Debtors' shareholders or members or the Debtors' boards of directors. On the Effective Date, to the extent not otherwise distributed to the holders of Allowed Claims or otherwise provided for in the Plan, each Debtor's assets, excluding Reclamation Trust Assets, will be transferred to the Liquidation Trust, which will liquidate and monetize such assets and make distributions to holders of Allowed Claims pursuant to the terms of the Plan.

(ii) To the extent not used in the transfer of Liquidation Trust Assets and not completed prior to the Effective Date, the Debtors (and their respective boards of directors) will dissolve as of the Effective Date, and are authorized to dissolve or terminate the existence of wholly owned non-Debtor subsidiaries following the Effective Date as well as any remaining health, welfare or benefit plans. For the avoidance of doubt, once all assets of a Debtor have been transferred to the Liquidation Trust or Reclamation Trust, as applicable, each such Debtor shall be deemed to have dissolved under applicable non-bankruptcy law without the need for any other action by such Debtor or any governmental authority.

(b) **Closing of the Debtors' Chapter 11 Cases.**

When (i) all Disputed Claims filed against a Debtor have become Allowed Claims or have been disallowed by Final Order, (ii) all Liquidation Trust Assets that were assets of such Debtor have been liquidated and the proceeds thereof distributed in accordance with the terms of the Plan and (iii) all other actions required to be taken by the Liquidation Trustee under the Plan or the Liquidation Trust Agreement, as applicable, have been taken, the Liquidation Trustee shall seek authority from the Bankruptcy Court to close such Debtor's Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules; provided; however, that the Bankruptcy Court shall retain jurisdiction over the Reclamation Trust after closing the Debtors' Chapter 11 Cases.

(c) **Plan Funding.**

The Plan Distributions to be made in Cash under the terms of the Plan shall be funded from the Distributable Cash on hand and the proceeds of Liquidation Trust Assets.

(d) **Settlement of Intercompany Matters.**

On the Effective Date, pursuant to section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, each Debtor and its respective successors and assigns shall waive and release each other and all of its respective successors from any and all Intercompany Claims amongst and between any or all of the Debtors. Such waiver and release shall be effective as a bar to all actions, Causes of Action, suits, Claims, Liens, or demands of any kind with respect to any Intercompany Claim amongst or between any or all of the Debtors. For the avoidance of doubt, the Hoops Parties are not being released under the terms of this Plan.

(e) **Release of Avoidance Actions for Holders of Claims in Class 3**

On the Effective Date, in connection with the Distributions to the holders of Allowed General Unsecured Claims in accordance with section 3.2 of the Plan, the Debtors shall grant each holder of an Allowed General Unsecured Claim an Avoidance Action Release, provided that the foregoing shall not apply to the Hoops Parties, United Bank, or settlements of Avoidance Actions approved by the Bankruptcy Court during these Chapter 11 Cases.

(f) **Monetization of Assets.**

The Liquidation Trustee shall, in an expeditious but orderly manner, pursue the Litigation Proceedings and monetize and convert the Liquidation Trust Assets to Cash and make timely distributions from Distributable Cash to the Liquidation Trust Beneficiaries in accordance with the Plan and the Liquidation Trust Agreement. In so doing, the Liquidation Trustee shall exercise its reasonable business judgment to maximize recoveries. The Liquidation Trustee shall have no liability to any party for the outcome of its decisions in this regard.

(g) **Books and Records.**

Books and records for each Debtor shall be maintained by the Liquidation Trustee or Reclamation Trustee, as applicable, to the extent necessary for the administration of the Liquidation Trust and Reclamation Trust. For the avoidance of doubt, to the extent the Debtors' books and records are

not necessary for the administration of the Liquidation Trust or Reclamation Trust, and except as previously ordered by the Bankruptcy Court, such books and records may be destroyed or abandoned without further order of the Bankruptcy Court as determined appropriate by the Liquidation Trustee.

(h) **Reporting Duties.**

The Liquidation Trustee shall be responsible for filing informational returns on behalf of the Debtors and the Liquidation Trust and paying any tax liability of the Debtors and the Liquidation Trust. Additionally, the Liquidation Trustee shall file (or cause to be filed) any other statements, returns, reports, or disclosures relating to the Debtors or the Liquidation Trust that are required by any governmental unit or applicable law.

(i) **Tax Obligations.**

The Liquidation Trustee shall have the powers of administration regarding all of the Debtors' and the Liquidation Trust's tax obligations, including filing of returns. The Liquidation Trustee shall (i) endeavor to complete and file each Debtor's final federal, state, and local tax returns, (ii) request, if necessary, an expedited determination of any unpaid tax liability of the Debtors or their Estates under section 505(b) of the Bankruptcy Code for all taxable periods of the Debtors ending after the Petition Date through the dissolution of the Liquidation Trust as determined under applicable tax laws, and (iii) represent the interests and accounts of the Liquidation Trust or the Debtors' Estates before any taxing authority in all matters including, without limitation, any action, suit, proceeding or audit.

(j) **Cancellation of Existing Securities and Agreements.**

Except for the purpose of evidencing a right to distribution under the Plan and except as otherwise set forth in the Plan, on the Effective Date, all notes, stock, agreements, instruments, certificates, and other documents evidencing any Claim against or Interest in the Debtors shall be cancelled and the obligations of the Debtors thereunder or in any way related thereto shall be fully released.

(k) **Indemnification Obligations.**

The Debtors shall assume and assign to the Liquidation Trust their indemnification obligations to current and former directors and officers of the Company (except for any obligations to the Hoops Parties), which shall in no way affect the rights and obligations of the insureds under the "tail" directors and officers insurance coverage purchased pre-petition.

(l) **Effectuating Documents; Further Transactions; Exemption from Certain Transfer Taxes.**

(i) The Debtors, the Liquidation Trustee, or the Reclamation Trustee, subject to the terms of the Liquidation Trust Agreement or the Reclamation Trust Agreement, as applicable, may take all actions to execute, deliver, file, or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan without the need for any

approvals, authorizations, actions, or consents except for those expressly required pursuant thereto. Any officer of each Debtor, the Liquidation Trustee, or the Reclamation Trustee, as applicable, shall be authorized to certify or attest to any of the foregoing actions.

(ii) Before, on or after the Effective Date (as appropriate), all matters provided for pursuant to the Plan that would otherwise require approval of the shareholders, directors or members of the Debtors shall be deemed to have been so approved and shall be in effect before, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the shareholders, directors, managers, or partners of the Debtors or the need for any approvals, authorizations, actions or consents.

(iii) To the extent permitted by section 1146(a) of the Bankruptcy Code, any post-Confirmation Date transfer from a Debtor to any Person pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (a) the issuance, distribution, transfer or exchange of any debt, equity security or other interest in the Debtors; (b) the creation, modification, consolidation or recording of any mortgage, deed of trust or other security interest; (c) the making, assignment or recording of any lease or sublease; or (d) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee or other similar tax or governmental assessment, in each case to the extent permitted by applicable law, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all documents necessary to evidence and implement the provisions of and the distributions to be made under the Plan, including the transfer of the Liquidation Trust Causes of Action to the Liquidation Trust and (ii) any sale or other transfer of the Debtors' assets in connection with the orderly liquidation of such assets, as contemplated by the Plan.

(m) **Comprehensive Settlement of Claims and Controversies.**

Pursuant to Bankruptcy Rule 9019 and in consideration for the Plan Distributions and other benefits provided in the Plan, the provisions of the Plan will constitute a good faith compromise and settlement of all Claims and controversies relating to the rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Allowed Interest or any Plan Distribution on account thereof. The entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such Claims or controversies and the Bankruptcy Court's finding that all such compromises or settlements are: (a) in the best interest of the Debtors, the Estates, and their property and stakeholders; and (b) fair, equitable, and reasonable.

7.5 ***Treatment of Executory Contracts and Unexpired Leases.***

(a) **Assumption of Executory Contracts and Unexpired Leases.**

On the Effective Date, the Debtors shall assume only the Executory Contracts and Unexpired Leases listed on the Schedule of Assumed Contracts and Leases. The Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumptions described in Section 8.1 of the Plan pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of such Executory Contract or Unexpired Lease, including objecting to the proposed cure amount related thereto, will be deemed to have consented to such assumption and agreed to the specified cure amount.

(b) **Rejection of Executory Contracts and Unexpired Leases.**

(i) Each Executory Contract and Unexpired Lease shall be deemed automatically rejected in accordance with the provisions of sections 365 and 1123 of the Bankruptcy Code as of the Effective Date, unless any such Executory Contract or Unexpired Lease: (a) is listed on the Schedule of Assumed Contracts and Leases, or (b) has already been assumed pursuant to an order of the Bankruptcy Court or is otherwise assumed pursuant to the terms of the Plan; *provided, however*, that any Executory Contracts or Unexpired Leases that are the subject of a separate motion to assume or reject under section 365 of the Bankruptcy Code pending on the Effective Date shall be treated as provided in the Final Order resolving such motion. The Confirmation Order shall constitute an order of the Bankruptcy Court approving the rejections described in Section 8.2 of the Plan pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. The Debtors reserve the right to amend the Schedule of Assumed Contracts and Leases at any time before the Effective Date.

(ii) Non-Debtor parties to Executory Contracts or Unexpired Leases that are deemed rejected as of the Effective Date shall have the right to assert any Claim on account of the rejection of such Executory Contracts or Unexpired Leases, including Claims under section 503 of the Bankruptcy Code; *provided* that such Claims must be filed in accordance with the procedures set forth in Section 8.3 of the Plan.

(c) **Claims Based on Rejection of Executory Contracts or Unexpired Leases.**

(i) All Claims arising from the rejection of Executory Contracts or Unexpired Leases must be filed with the Claims Agent according to the procedures established for the filing of proof of claim or before the later of (i) the applicable Bar Date and (ii) 30-days after the entry of the order approving the rejection of such Executory Contract or Unexpired Lease. All Claims arising from the rejection of Executory Contracts or Unexpired Leases that are evidenced by a timely filed proof of claim, will be treated as General Unsecured Claims. Upon receipt of the Plan Distribution provided in Section 3.3.3 of the Plan, all such Claims shall be satisfied, settled, and released as of the Effective Date, and shall not be enforceable against the Debtors, the Estates, the Liquidation Trust, or their respective properties or interests in property.

(ii) Any Person that is required to file a proof of claim arising from the rejection of an Executory Contract or 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 Estates, the Liquidation Trust, or their respective properties or interests in property, unless otherwise ordered by the Bankruptcy Court or as otherwise provided in the Plan.

(d) **Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.**

(i) Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the cure amount in Cash on the Effective Date or on such other terms as the parties to such Executory Contract or Unexpired Lease may agree. In the event of a dispute regarding (i) the amount of any payments to cure such a default, (ii) the ability of the Liquidation Trustee or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code under the Executory Contract or Unexpired Lease to be assumed, or (iii) any other matter pertaining to the proposed assumption, the 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 the assumption.

(ii) No later than 14 days prior to the commencement of the Confirmation Hearing, the Debtors shall file a schedule setting forth the proposed cure amount, if any, for each Executory Contract and Unexpired Lease to be assumed pursuant to Section 8.1 of the Plan, and serve such schedule on each applicable counterparty, together with procedures for objecting thereto and resolution of disputes by the Bankruptcy Court. Any objection by a counterparty to the proposed assumption of an Executory Contract or Unexpired Lease or related cure amount must be filed, served and actually received by the Debtors at least ten days prior to the Confirmation Hearing. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption or cure amount will be deemed to have consented to such assumption and agreed to the specified cure amount.

7.6 ***Fee Claims***

All Professional Persons seeking allowance by the Bankruptcy Court of a Fee Claim, except to the extent that a Fee Claim has already been satisfied during the Chapter 11 Cases or a holder of a Fee Claim and the applicable Debtor(s) agree to less favorable treatment, shall be paid in full and in Cash, consistent with the priorities of the Bankruptcy Code, as Distributable Cash becomes available to the Liquidation Trust, *provided*, *however,* that the Liquidation Trustee shall without any further notice to or action, order, or approval of the Bankruptcy Court, first allocate Distributable Cash to payment of Allowed Fee Claims held by Ongoing Professionals. For the avoidance of doubt, holders of Allowed Fee Claims will not receive any Distribution on the Effective Date and will only receive a Distribution as Distributable Cash becomes available to the Liquidation Trust

7.7 ***Administrative Expense Claims.***

All known holders of unpaid Administrative Expense Claims (other than Fee Claims) and Priority Tax Claims and except to the extent that an Administrative Expense Claim or Priority Tax Claim has already been satisfied during the Chapter 11 Cases or a holder of an Administrative Expense Claim or Priority Tax Claim and the applicable Debtor(s) agree to less favorable treatment, each

holder of an Allowed Administrative Expense Claim and Priority Tax Claim shall receive, in full and final satisfaction, compromise, settlement, and release of and in exchange for its Claim, payment in full and in Cash from Distributable Cash until such Claims are satisfied as required by the Bankruptcy Code. For the avoidance of doubt, holders of Allowed Administrative Expense Claims and Priority Tax Claims will not receive any Distribution on the Effective Date and will only receive a Distribution as Distributable Cash becomes available to the Liquidation Trust. Distributions to the holders of Allowed Administrative Expense Claims and Priority Tax Claims shall comply with the priorities of the Bankruptcy Code. The treatment afforded to holders of an Administrative Expense Claims or Priority Tax Claims under the Plan is only available if each such holder agrees to such treatment. Failure to object to confirmation by a holder of an Allowed Administrative Expense Claim and Allowed Priority Tax Claim shall be deemed to be such holder's consent to receive treatment for such Claim that is different from that set forth in section 1129(a)(9) of the Bankruptcy Code.

The treatment of Administrative Expense Claims under the Plan is consistent with applicable law and similar approaches have been adopted by other debtors facing administrative insolvency and have been approved by bankruptcy courts under such circumstances. *See e.g., In re MSR Hotels & Resorts, Inc.*, Case No. 13- 11512 (SHL) (Bankr. S.D.N.Y. Dec. 20, 2013) (approving a disclosure statement that provided in relevant part, "General Administrative Claims, Other Priority Claims, DIP Claims, and Priority Tax Claims are impaired under the Plan. Failure to object to the Plan will be deemed consent to such treatment under the Plan"); *In re Teligent*, 282 B.R. 765 (Bankr. S.D.N.Y. 2002) (confirming a plan where administrative and priority claims would be paid through a claim fund and provided notice to administrative creditors via a consent form); *In re Trans World Airlines, Inc. III*, Case No. 01-00056 (PJW) (D. Del. Feb. 15, 2002) (confirming a plan that provided that any administrative expense convenience claims (as defined in the plan) were entitled to 50 percent of their allowed claim and any such creditors that failed to object would be deemed to accept such treatment). The rights of these administrative claimants to object to this treatment have been fully preserved.

The provisions in this section have been specifically included to make sure that affected creditors are fully informed of their rights. The Debtors seek to be completely transparent about the treatment of Administrative Expense Claims and Priority Tax Claims under the Plan and have made clear that if a party does not timely object to its treatment under the Plan or fails to object to the Plan, such party will be deemed to have consented to the treatment contemplated by the Plan. The notion of such implied consent by the failure to object to the Plan complies with the Bankruptcy Code. The plain language of Section 1129(a)(9) simply requires "agreement" to different treatment of a Priority Claim. There is nothing in Section 1129(a)(9) that requires affirmative agreement. Courts should, therefore, "properly assume, absent sufficient indication to the contrary, that Congress intends the words in its enactments to carry 'their ordinary, contemporary, common meaning.'" The ordinary and common meaning of "agree" is "consent or accede." "Consent" may be stated expressly, or implied from one's conduct without any direct expression. Thus, Congress's use of the word "agree" in section 1129(a)(9) of the Bankruptcy Code should be interpreted to include implied consent.

Indeed, the bankruptcy and plan solicitation, voting and objection process is replete with situations where courts have found such processes include implied consent. *In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 260-62 (Bankr. S.D.N.Y. 2007) (noting the importance of allowing non-voting

creditors to be deemed accepted in large cases); *In re Trans World Airlines, Inc.*, No. 01–0056, (Bankr. D. Del. 2002) (holding "agree" in section 1129(a)(9) should be interpreted to include implied consent) (June 14, 2002 Hr'g Tr.); *In re Teligent, Inc.*, 282 B.R. 765, 771-73 (Bankr. S.D.N.Y. 2002) (same); *In re Specialty Retail Shops Holding Corp., et al.*, No. 19-80064 (TLS) (Bankr. D. Neb. 2019) (same); *In re Toys "R" Us, Inc.*, No. 17- 34665 (Bankr. E.D.Va. 2018) (approving solicitation procedures that included implied consent).

Where Congress has intended that a creditor has the right to affirmatively agree to certain treatment, it has expressly stated so in the provision. For example, section 1129(a)(8) requires that each class under a plan "accepts" the plan or is unimpaired. In order to accomplish this, Rule 3018(c) governing acceptance or rejection of a plan by voting classes, provides that "[a]n acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor…." Congress clearly specified that voting creditors must affirmatively agree to be bound by a plan by providing a signed writing (in conformance with the Official Forms). Notably, there is no parallel Bankruptcy Rule for establishing how a party can "agree" to a different treatment under section 1129(a)(9). Rather, section 1129(a)(9) has none of the affirmative requirements of Rule 3018(c), simply providing that a holder of a claim "agree" to treatment other than the default standard under Section 1129(a)(9). Courts have recognized that the high bar set by the language in Rule 3018(c) in obtaining the agreement of voting creditors to a plan is not representative of other provisions of the Bankruptcy Code.12 Accordingly, use of the word "agree" without reliance on a specific meaning in section 1129(a)(9) demonstrates a broader usage consistent with the ordinary definition of the word.

7.8 ***Liquidation Trust.***

(a) **Generally.**

On the Effective Date, the Liquidation Trust shall be established and become effective for the benefit of Liquidation Trust Beneficiaries. The powers, authority, responsibilities, and duties of the Liquidation Trust and the Liquidation Trustee are set forth in and shall be governed by the Plan and the Liquidation Trust Agreement. In the event of any conflict between the terms of this Agreement and the Plan, the Plan shall control. The Liquidation Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances, including, without limitation, any and all provisions necessary to ensure the continued treatment of the Liquidation Trust as a grantor trust and the Liquidation Trust Beneficiaries as the grantors and owners thereof for federal income tax purposes. The Debtors shall transfer, without recourse, to the Liquidation Trust all of their right, title, and interest in the Liquidation Trust Assets. Upon the transfer by the Debtors of the Liquidation Trust Assets to the Liquidation Trust, the Debtors will have no reversionary or further interest in or with respect to the Liquidation Trust Assets or the Liquidation Trust.

(b) **Purposes and Establishment of the Liquidation Trust.**

(i) On the Effective Date, the Liquidation Trust shall be established pursuant to the Liquidation Trust Agreement for the purposes of liquidating and administering the Liquidation Trust Assets, including the pursuit of the Litigation Proceedings, and making distributions on account thereof as provided for under the Plan. The Liquidation Trust is intended

to qualify as a liquidation trust pursuant to Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or any other business, except to the extent reasonably necessary to, and consistent with, the purpose of the Liquidation Trust. The Liquidation Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth in the Plan or in the Liquidation Trust Agreement.

(ii) On the Effective Date, the Liquidation Trustee, on behalf of the Debtors, shall execute the Liquidation Trust Agreement and shall take all other steps necessary to establish the Liquidation Trust pursuant to the Liquidation Trust Agreement and consistent with the Plan.

(c) **Liquidation Trust Assets.**

(i) On the Effective Date, and in accordance with sections 1123 and 1141 of the Bankruptcy Code and pursuant to the terms of the Plan, all right, title and interest in all of the Liquidation Trust Assets, as well as the rights and powers of each Debtor in such Liquidation Trust Assets, shall automatically vest in the Liquidation Trust, free and clear of all Claims and Interests for the benefit of the Liquidation Trust Beneficiaries. Upon the transfer of the Liquidation Trust Assets, the Debtors shall have no interest in or with respect to the Liquidation Trust Assets or the Liquidation Trust. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Liquidation Trust Assets to the Liquidation Trust shall not affect the mutuality of obligations which otherwise may have existed prior to the effectuation of such transfer. Such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax, pursuant to section 1146(a) of the Bankruptcy Code. In connection with the transfer of such assets, any attorney client privilege, work product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Liquidation Trust shall vest in the Liquidation Trust and its representatives, and the Debtors and the Liquidation Trustee are directed to take all necessary actions to effectuate the transfer of such privileges. The Liquidation Trustee shall agree to accept and hold the Liquidation Trust Assets in the Liquidation Trust for the benefit of the Liquidation Trust Beneficiaries, subject to the terms of the Plan and the Liquidation Trust Agreement.

(ii) The Debtors, the Liquidation Trustee, the Liquidation Trust Beneficiaries, and any party under the control of such parties will execute any documents or other instruments and shall take all other steps as necessary to cause title to the Liquidation Trust Assets to be transferred to the Liquidation Trust.

(d) **Valuation of Assets.**

(i) As soon as practicable after the establishment of the Liquidation Trust, the Liquidation Trustee shall, in good faith and using reasonable efforts, determine the value of the assets transferred to the Liquidation Trust, and the Liquidation Trustee shall apprise, in writing, the Liquidation Trust Beneficiaries of such valuation. The valuation shall be used consistently by all parties (including the Liquidation Trustee and Liquidation Trust Beneficiaries) for all federal income tax purposes.

(ii) In connection with the preparation of the valuation contemplated by the Plan and the Liquidation Trust Agreement, the Liquidation Trust shall be entitled to retain such

professionals and advisors as the Liquidation Trust shall determine to be appropriate or necessary, and the Liquidation Trustee shall take such other actions in connection therewith as it determines to be appropriate or necessary. The Liquidation Trust shall bear all of the reasonable costs and expenses incurred in connection with determining such value, including the fees and expenses of any professionals retained in connection therewith.

(e) **Appointment of the Liquidation Trustee.**

On the Effective Date and in compliance with the provisions of the Plan and the Liquidation Trust Agreement, the Debtors shall appoint a person or firm as Liquidation Trustee. The salient terms of the Liquidation Trustee's employment, including the Liquidation Trustee's duties and compensation, to the extent not set forth in the Plan, shall be set forth in the Liquidation Trust Agreement or the Confirmation Order.

(f) **Duties and Powers of the Liquidation Trustee.**

(i) Authority.

The duties and powers of the Liquidation Trustee shall include all powers necessary to implement the Plan with respect to all Debtors and pursue the Liquidation Trust Causes of Action, including the Litigation Proceedings, and monetize, sell, transfer, liquidate and transact with respect to all other Liquidation Trust Assets, including, without limitation, the duties and powers listed herein. The Liquidation Trustee will administer the Liquidation Trust in accordance with the Liquidation Trust Agreement. The Liquidation Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidation Trust Assets, make timely Plan Distributions, and not unduly prolong the duration of the Liquidation Trust.

(ii) Claims and Causes of Action.

The Liquidation Trustee may object to, seek to estimate, seek to subordinate, compromise, or settle any and all Claims against the Debtors and Causes of Action of the Debtors that have not already been deemed Allowed Claims as of the Effective Date. The Liquidation Trustee shall have the absolute right to pursue or not to pursue any and all Liquidation Trust Assets as it determines in the best interests of the Liquidation Trust Beneficiaries, and consistent with the purposes of the Liquidation Trust, and shall have no liability for the outcome of its decision except for any damages caused by fraud, willful misconduct, or gross negligence. Liquidation Trust Causes of Action may only be prosecuted or settled by the Liquidation Trustee, in its sole discretion. The Liquidation Trust Causes of Action will be transferred to the Liquidation Trust on the Effective Date.

(iii) Retention of Professionals.

The Liquidation Trustee may enter into employment agreements and retain professionals to pursue the Liquidation Trust Causes of Action and otherwise advise the Liquidation Trustee and provide services to the Liquidation Trust in connection with the matters contemplated by the Plan, the Confirmation Order, and the Liquidation Trust Agreement without further order of the Bankruptcy Court. Unless an alternative fee arrangement has been agreed to (either by order of the Bankruptcy Court or with the consent of the Liquidation Trustee), professionals retained by the Liquidation Trustee shall be compensated from the proceeds of the Liquidation Trust Assets.

(iv) Distributions; Withholding.

As described in Article 7 of the Plan, the Liquidation Trustee shall make distributions to the Liquidation Trust Beneficiaries in accordance with the terms of the Liquidation Trust Agreement and the Plan and consistent with the priorities of the Bankruptcy Code, unless otherwise provided under the Plan. The expenses of the Liquidation Trustee will be given priority over distributions to the Liquidation Trust Beneficiaries.

The Liquidation Trustee may withhold from amounts otherwise distributable to any entity any and all amounts, determined in the Liquidation Trustee's sole discretion, required by the Liquidation Trust Agreement, any law, regulation, rule, ruling, directive, treaty, or other governmental requirement. Notwithstanding the above, each holder of an Allowed Claim that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any taxes imposed on such holder by any governmental unit, including income, withholding, and other tax obligations, on account of such Plan Distribution. The Liquidation Trustee or the Disbursing Agent, as applicable, may require, as a condition to the receipt of a Plan Distribution, that the holder complete the appropriate Form W-8 or Form W-9, as applicable to each holder. If the holder fails to comply with such a request within 180 days, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 7.4.5 the Plan. Further, the Allowed Claim of any such holder shall be deemed released and the holder thereof shall be forever barred, estopped, and enjoined from asserting any Claim against any of the Debtors, the Liquidation Trust or the Liquidation Trustee.

(v) Reasonable Fees and Expenses.

The Liquidation Trustee may incur and pay any reasonable and necessary expenses in connection with the performance of its duties under the Plan, including in connection with retaining professionals and/or entering into agreements pursuant to Sections 9.6.3 and 9.6.9 of the Plan. The Liquidation Trustee shall be paid from the proceeds of the Liquidation Trust Assets.

(vi) Investment Powers.

The right and power of the Liquidation Trustee to invest the Liquidation Trust Assets, the proceeds thereof, or any income earned by the Liquidation Trust shall be limited to the right and power to invest in such assets only in Cash and U.S. Government securities as defined in section 2(a)(16) of the Investment Company Act of 1940, as amended; *provided, however,* that (a) the scope of any such permissible investments shall be further limited to include only those investments that a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) may be permitted to hold and (b) the Liquidation Trustee may expend the Liquidation Trust Assets (i) as reasonably necessary to meet contingent liabilities and maintain the value of the Liquidation Trust Assets during liquidation, (ii) to pay reasonable administrative expenses (including, but not limited to, any taxes imposed on the Liquidation Trust or reasonable fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Liquidation Trust (or to which the Liquidation Trust Assets are otherwise subject) in accordance with the Plan or the Liquidation Trust Agreement.

(vii) Liquidation Trustee's Tax Power for Debtors.

As described in section 5.9 of the Plan, following the Effective Date, the Liquidation Trustee shall prepare and file (or cause to be prepared and filed), on behalf of the Debtors, all tax returns required to be filed or that the Liquidation Trustee otherwise deems appropriate. In the event that the Liquidation Trust shall fail or cease to qualify as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), the Liquidation Trustee shall take any and all necessary actions as it shall deem appropriate to have the Liquidation Trust classified as a partnership for federal tax purposes under Treasury Regulation section 301.7701-3, including, if necessary, creating or converting the Liquidation Trust into a Delaware limited liability partnership or limited liability company that is so classified.

(viii) Insurance.

The Liquidation Trustee will maintain customary insurance coverage for the protection of the Liquidation Trustee on and after the Effective Date.

(ix) Agreements and Other Actions.

The Liquidation Trustee may enter into any agreement or execute any document required by or consistent with the Plan and perform all of the Debtors' and Liquidation Trust's obligations thereunder. The Liquidation Trustee may take all other actions not inconsistent with the provisions of the Plan and the Liquidation Trust Agreement that the Liquidation Trustee deems reasonably necessary or desirable with respect to administering the Plan.

(g) **Funding of the Liquidation Trust.**

On the Effective Date, the Liquidation Trust Reserve shall be transferred to, and vest in, the Liquidation Trust for purposes of funding the Liquidation Trust. Thereafter, the terms of the Liquidation Trust Agreement shall govern the funding of the Liquidation Trust.

(h) **Exculpation; Indemnification.**

The Liquidation Trustee, the Liquidation Trust, the professionals of the Liquidation Trust, and their representatives will be exculpated and indemnified pursuant to the terms of the Liquidation Trust Agreement. The indemnification described in the Liquidation Trust Agreement will exclude willful misconduct and gross negligence. Any indemnification claim of the Liquidation Trustee or the other individuals entitled to indemnification under this subsection shall be satisfied solely from the Liquidation Trust Assets and shall be entitled to a priority distribution therefrom, ahead of any other claim to or interest in such assets. The Liquidation Trustee and its representatives shall be entitled to rely, in good faith, on the advice of their retained professionals.

(i) **Federal Income Tax Treatment of Liquidation Trust.**

(i) Pursuant to Revenue Procedure 94-45, for all U.S. federal income tax purposes, all parties (including, without limitation, the Debtors, the Liquidation Trustee and the Liquidation Trust Beneficiaries) shall treat the transfer of the Liquidation Trust Assets to the Liquidation Trust for the benefit of the Liquidation Trust Beneficiaries, whether their Claims are

Allowed on or after the Effective Date as (i) a transfer of the Liquidation Trust Assets (subject to any obligations relating to those assets) directly to the Liquidation Trust Beneficiaries, in exchange for those Liquidation Trust Beneficiaries relinquishing their claims, followed by (ii) the transfer by the Liquidation Trust Beneficiaries to the Liquidation Trust of the Liquidation Trust Assets (other than the Liquidation Trust Assets allocable to any disputed ownership fund) in exchange for interests in Liquidation Trust. Accordingly, the Liquidation Trust Beneficiaries shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the Liquidation Trust Assets (other than such Liquidation Trust Assets as are allocable to any disputed ownership fund). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

(ii) Subject to contrary definitive guidance from the Internal Revenue Service or a court of competent jurisdiction (including the receipt by the Liquidation Trustee of a private letter ruling if the Liquidation Trustee so requests, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Liquidation Trustee), the Liquidation Trustee may (A) timely elect to treat any Disputed Claims reserve as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9 and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Liquidation Trustee, the Debtors and the Liquidation Trust Beneficiaries) shall report for U.S. federal, state and local income tax purposes consistently with the foregoing.

(j) **Tax Reporting.**

(i) The Liquidation Trustee shall file tax returns for the Liquidation Trust treating the Liquidation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this Section 9.10 of the Plan. The Liquidation Trustee also will annually send to each Liquidation Trust Beneficiary a separate statement setting forth the Liquidation Trust Beneficiary's share of items of income, gain, loss, deduction or credit (including the receipts and expenditures of the Liquidation Trust) as relevant for U.S. federal income tax purposes and will instruct all such holders to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such holder's underlying beneficial holders with instructions to utilize such information in preparing their U.S. federal income tax returns. The Liquidation Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Liquidation Trust that is required by any governmental unit.

(ii) The valuation of the Liquidation Trust Assets prepared pursuant to Section 9.4 of the Plan shall be used consistently by all parties (including the Liquidation Trustee and the Liquidation Trust Beneficiaries) for all federal income tax purposes.

(iii) The Liquidation Trustee shall be responsible for payment, out of the Liquidation Trust Assets, of any taxes imposed on the Liquidation Trust or the Liquidation Trust Assets, including any disputed ownership fund. In the event, and to the extent, any Cash retained on account of Disputed Claims in a disputed ownership fund is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims or (ii) to the extent that such Disputed Claims

have subsequently been resolved, deducted from any amounts otherwise distributable by the Liquidation Trustee as a result of the resolution of such Disputed Claims.

(iv) The Liquidation Trustee may request an expedited determination of taxes of the Liquidation Trust, including the Disputed Claims Reserve, or the Plan Debtors under section 505(b) of the Bankruptcy Code, for all tax returns filed for, or on behalf of, the Liquidation Trust or the Plan Debtors for all taxable periods through the dissolution of the Liquidation Trust.

(k) **Tax Withholdings by Liquidation Trustee.**

The Liquidation Trustee may withhold and pay to the appropriate taxing authority all amounts required to be withheld pursuant to the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or distribution to the Liquidation Trust Beneficiaries. All such amounts withheld and paid to the appropriate taxing authority shall be treated as amounts distributed to such Liquidation Trust Beneficiaries for all purposes of the Liquidation Trust Agreement. The Liquidation Trustee shall be authorized to collect such tax information from the Liquidation Trust Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as it, in its sole discretion, deems necessary to effectuate the Plan, the Confirmation Order and the Liquidation Trust Agreement. In order to receive distributions under the Plan, all Liquidation Trust Beneficiaries will need to identify themselves to the Liquidation Trustee and provide tax information and the specifics of their holdings, to the extent the Liquidation Trustee deems appropriate. This identification requirement may, in certain cases, extend to holders who hold their securities in street name. The Liquidation Trustee may refuse to make a distribution to any Liquidation Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; *provided*, *however*, that, upon the delivery of such information by a Liquidation Trust Beneficiary, the Liquidation Trustee shall make such distribution to which the Liquidation Trust Beneficiary is entitled, without interest; and, *provided*, *further*, that, if the Liquidation Trustee fails to withhold in respect of amounts received or distributable with respect to any such holder and the Liquidation Trustee is later held liable for the amount of such withholding, such holder shall reimburse the Liquidation Trustee for such liability.

(l) **Dissolution.**

The Liquidation Trust shall be dissolved at such time as (i) all of the Liquidation Trust Assets have been distributed pursuant to the Plan and the Liquidation Trust Agreement, (ii) the Liquidation Trustee determines that the administration of any remaining Liquidation Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit, or (iii) all distributions required to be made by the Liquidation Trustee under the Plan and the Liquidation Trust Agreement have been made; *provided, however*, that in no event shall the Liquidation Trust be dissolved later than five years from the Effective Date unless the Bankruptcy Court determines that a fixed period extension (not to exceed two years, including any prior extensions) is necessary to facilitate or complete the recovery and liquidation of the Liquidation Trust Assets. If at any time the Liquidation Trustee determines, in reliance upon such professionals as the Liquidation Trustee may retain, that the expense of administering the Liquidation Trust so as to make a final distribution to the Liquidation Trust Beneficiaries is likely to exceed the value of the remaining Liquidation Trust Assets, the Liquidation Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve the Liquidation Trust, (ii) donate any balance to a charitable organization

(A) described in section 501(c)(3) of the Tax Code, (B) exempt from U.S. federal income tax under section 501(a) of the Tax Code, (C) not a "private foundation" as defined in section 509(a) of the Tax Code, and (D) that is unrelated to the Debtors, the Liquidation Trust, and any insider of the Liquidation Trustee, and (iii) dissolve the Liquidation Trust.

7.9 ***Reclamation Trust***

(a) **Generally.**

On the Effective Date, the Reclamation Trust shall be established and become effective for the benefit of Reclamation Trust Beneficiaries. The powers, authority, responsibilities, and duties of the Reclamation Trust and the Reclamation Trustee are set forth in and shall be governed by the Plan and the Reclamation Trust Agreement. In the event of any conflict between the terms of this Reclamation Trust Agreement and the Plan, the Plan shall control. The Reclamation Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances. The Debtors shall transfer, without recourse, to the Reclamation Trust all of their right, title, and interest in the Reclamation Trust Assets. Upon the transfer by the Debtors of the Reclamation Trust Assets to the Reclamation Trust, the Debtors will have no reversionary or further interest in or with respect to the Reclamation Trust Assets or the Reclamation Trust.

(b) **Purposes and Establishment of the Reclamation Trust.**

(i) On the Effective Date, the Reclamation Trust shall be established pursuant to the Reclamation Trust Agreement for the exclusive purpose of: (i) acting as a successor to the Debtors solely for the purpose of performing, managing, and funding satisfaction of the Reclamation Obligations; (ii) own the Reclamation Trust Assets, in a fiduciary capacity; (iii) carry out administrative functions related to reclamation and remediation of the Permitted Areas by the Reclamation Trust and other administrative functions as set forth herein; and (iv) ultimately sell or transfer all or part of the Reclamation Trust Assets, if possible. The Reclamation Trust is intended to qualify as a qualified settlement fund (for which no grantor trust election has been made) pursuant to the Treasury Regulations under section 468B of the Tax Code and related Treasury Regulations, with no objective to continue or engage in the conduct of a trade or any other business, except to the extent reasonably necessary to, and consistent with, the purpose of the Reclamation Trust. The Reclamation Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Reclamation Trust Agreement.

(ii) On the Effective Date, the Reclamation Trustee, on behalf of the Debtors, shall execute the Reclamation Trust Agreement and shall take all other steps necessary to establish the Reclamation Trust pursuant to the Reclamation Trust Agreement and consistent with the Plan.

(iii) The Reclamation Trust will not have nor be granted any claims against the Debtors or the Liquidation Trust. Any payments or distributions made by the Liquidation Trust in respect of any Allowed Claims asserted against the Debtors by the Impacted States or other governmental entities for the cost of completing reclamation on any of the Permitted Areas in excess of the bonded amounts shall be transferred by the Impacted States or other governmental entities to the Reclamation Trust.

(c) **Reclamation Trust Assets.**

(i) On the Effective Date, and in accordance with sections 1123 and 1141 of the Bankruptcy Code and pursuant to the terms of the Plan, all right, title and interest in all of the Reclamation Trust Assets, as well as the rights and powers of each Debtor in such Reclamation Trust Assets, shall automatically vest in the Reclamation Trust, for the benefit of the Reclamation Trust Beneficiaries. Upon the transfer of the Reclamation Trust Assets, the Debtors shall have no interest, and shall have no further liability or responsibility of any kind, in or with respect to the Reclamation Trust Assets or the Reclamation Trust. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Reclamation Trust Assets to the Reclamation Trust shall not affect the mutuality of obligations which otherwise may have existed prior to the effectuation of such transfer. Such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax, pursuant to section 1146(a) of the Bankruptcy Code. In connection with the transfer of such assets, any attorney client privilege, work product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Reclamation Trust shall vest in the Reclamation Trust and its representatives, and the Debtors and the Reclamation Trustee are directed to take all necessary actions to effectuate the transfer of such privileges. The Reclamation Trustee shall agree to accept and hold the Reclamation Trust Assets in the Reclamation Trust for the benefit of the Reclamation Trust Beneficiaries, subject to the terms of the Plan and the Reclamation Trust Agreement, and take all necessary steps to satisfy the Reclamation Obligations.

(ii) The Debtors, the Reclamation Trustee, the Reclamation Trust Beneficiaries, and any party under the control of such parties will execute any documents or other instruments and shall take all other steps as necessary to cause title to the Reclamation Trust Assets to be transferred to the Reclamation Trust.

(d) **Appointment of the Reclamation Trustee.**

On the Effective Date and in compliance with the provisions of the Plan and the Reclamation Trust Agreement, the Debtors in consultation with the Sureties and the Impacted States shall appoint a person or firm as Reclamation Trustee. The salient terms of the Reclamation Trustee's employment, including the Reclamation Trustee's duties and compensation, to the extent not set forth in the Plan Supplement, shall be set forth in the Reclamation Trust Agreement or the Confirmation Order.

(e) **Duties and Powers of the Reclamation Trustee.**

(i) Authority.

The duties and powers of the Reclamation Trustee shall include all powers necessary to (a) implement the provisions of the Plan and the Reclamation Trust Agreement with respect to the Reclamation Obligations, (b) transfer, liquidate and transact with respect to all Reclamation Trust Assets, and (c) fund the remediation activities necessary to fulfill the Reclamation Obligations, as necessary. The Reclamation Trustee will administer the Reclamation Trust in accordance with the Reclamation Trust Agreement. The Reclamation Trustee shall, in an expeditious but orderly

manner, liquidate and convert to Cash the Reclamation Trust Assets, make timely reclamation and remediation efforts, and not unduly prolong the duration of the Reclamation Trust.

(ii) Retention of Professionals.

The Reclamation Trustee may enter into employment agreements and retain professionals to advise the Reclamation Trustee and provide services to the Reclamation Trust in connection with the matters contemplated by the Plan, the Confirmation Order, and the Reclamation Trust Agreement without further order of the Bankruptcy Court. Unless an alternative fee arrangement has been agreed to (either by order of the Bankruptcy Court or with the consent of the Reclamation Trustee), professionals retained by the Reclamation Trustee shall be compensated from the proceeds of the Reclamation Trust Assets.

(iii) Reasonable Fees and Expenses.

The Reclamation Trustee may incur and pay any reasonable and necessary expenses in connection with the performance of its duties under the Plan, including in connection with retaining professionals and/or entering into agreements pursuant to Sections 10.5.2 and 10.5.6 of the Plan. The Reclamation Trustee shall be paid from the proceeds of the Reclamation Trust Assets.

(iv) Investment Powers.

The right and power of the Reclamation Trustee to invest the Reclamation Trust Assets, the proceeds thereof, or any income earned by the Reclamation Trust shall be limited to the right and power to invest in such assets only in Cash and U.S. Government securities as defined in section 2(a)(16) of the Investment Company Act of 1940, as amended; *provided, however,* that (a) the scope of any such permissible investments shall be further limited to include only those investments that a qualified settlement fund (for which no grantor trust election has been made) pursuant to the Treasury Regulations under section 468B of the Tax Code and related Treasury Regulations may be permitted to hold, and (b) the Reclamation Trustee may expend the Reclamation Trust Assets (i) as reasonably necessary to meet contingent liabilities and maintain the value of the Reclamation Trust Assets during liquidation, (ii) to pay reasonable administrative expenses (including, but not limited to, any taxes imposed on the Reclamation Trust or reasonable fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Reclamation Trust (or to which the Reclamation Trust Assets are otherwise subject) in accordance with the Plan or the Reclamation Trust Agreement.

(v) Insurance.

The Reclamation Trustee will maintain customary insurance coverage for the protection of the Reclamation Trustee on and after the Effective Date.

(vi) Agreements and Other Actions.

The Reclamation Trustee may enter into any agreement or execute any document required by or consistent with the Plan and perform all of the Debtors' and Reclamation Trust's obligations thereunder. The Reclamation Trustee may take all other actions not inconsistent with the

provisions of the Plan and the Reclamation Trust Agreement that the Reclamation Trustee deems reasonably necessary or desirable with respect to administering the Plan.

(f) **Funding of the Reclamation Trust.**

On the Effective Date, the Reclamation Trust Reserve shall be transferred to, and vest in, the Reclamation Trust for purposes of funding the Reclamation Trust. Thereafter, the terms of the Reclamation Trust Agreement shall govern the funding of the Reclamation Trust.

(g) **Exculpation; Indemnification.**

The Reclamation Trustee, the Reclamation Trust, the professionals of the Reclamation Trust, and their representatives will be exculpated and indemnified pursuant to the terms of the Reclamation Trust Agreement. The indemnification described in the Reclamation Trust Agreement will exclude willful misconduct and gross negligence. Any indemnification claim of the Reclamation Trustee or the other individuals entitled to indemnification under this subsection shall be satisfied solely from the Reclamation Trust Assets and shall be entitled to a priority, ahead of any other claim to or interest in such assets. The Reclamation Trustee and its representatives shall be entitled to rely, in good faith, on the advice of their retained professionals.

(h) **Federal Income Tax Treatment of Reclamation Trust.**

The Reclamation Trust is intended to be treated as a qualified settlement fund (for which no grantor trust election has been made) pursuant to Treasury Regulations under section 468B of the Tax Code and related Treasury Regulations for federal income tax purposes, and to the extent provided by law, the Reclamation Trust Agreement shall be governed and construed in all respects consistent with such intent. In no event shall the Reclamation Trustee take the position that any portion of the Reclamation Trust or any portion of the Reclamation Trust Assets is a grantor trust owned by any or all of the Debtors.

(i) **Tax Reporting.**

The Reclamation Trustee shall be the "administrator," within the meaning of Treasury Regulation Section 1.468B-2(k)(3), of the Reclamation Trust. Subject to definitive guidance from the Internal Revenue Service or a judicial decision to the contrary, the Reclamation Trustee shall file tax returns and pay applicable taxes with respect to the Reclamation Trust in a manner consistent with the provisions of Treasury Regulation Section 1.468B-2. All such taxes shall be paid from the Reclamation Trust Assets.

(j) **Tax Withholdings by Reclamation Trustee.**

The Reclamation Trustee may withhold and pay to the appropriate taxing authority all amounts required to be withheld pursuant to the Tax Code or any provision of any foreign, state or local tax law with respect to any distribution from the Reclamation Trust. All such amounts withheld and paid to the appropriate taxing authority shall be treated as amounts distributed for purposes of the Reclamation Trust Agreement.

(k) **Dissolution.**

The Reclamation Trust shall be dissolved at such time as (i) all of the Reclamation Trust Assets have been either liquidated, sold or transferred, and/or (ii) the Reclamation Obligations have been satisfied pursuant to the Plan and the Reclamation Trust Agreement; *provided*, *however*, that in no event shall the Reclamation Trust be dissolved later than five years from the Effective Date unless the Bankruptcy Court determines that a fixed period extension (not to exceed two years, including any prior extensions) is necessary to facilitate or complete the purposes of the Reclamation Trust. To the extent any Cash or other funds remain in the Reclamation Trust at dissolution, such funds shall be distributed to the Sureties on a *pro rata* basis consistent with each Surety's initial contribution to the Reclamation Trust Reserve.

7.10 ***Binding Effect.***

Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code and subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against, or Interest in, the Debtors and inure to the benefit of and be binding on such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

7.11 ***Release of Claims Against and Interests in the Debtors.***

Unless otherwise provided in the Plan, any Plan Distributions and deliveries to be made on account of Allowed Claims under the Plan shall be in complete settlement, satisfaction, and release of such Allowed Claims. Holders of Allowed Claims may assert such Claims against each Debtor obligated with respect to such Claims; *provided*, *however*, that in no case shall the aggregate value of all property received or retained under the Plan (or from third parties) by a holder of an Allowed Claim exceed 100% of such holder's underlying Allowed Claim plus any post-petition interest on such Claim, to the extent such interest is permitted by Section 7.6 of the Plan.

7.12 ***Term of Pre-Confirmation Injunctions or Stays.***

Unless otherwise provided in the Plan, all injunctions or stays arising prior to the Confirmation Date in accordance with sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

7.13 ***Debtor Release.***

(a) **Upon the Effective Date of the Plan, for good and valuable consideration, pursuant to section 1123(b) of the Bankruptcy Code and to the fullest extent permitted by applicable law, the Debtors, their Estates and any Person (including the Liquidation Trustee and Reclamation Trustee) seeking to exercise the rights of the Debtors or the Debtors' Estates, including, without limitation, the Committee, any successor to the Debtors or the Debtors' Estates or any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code (an "Estate Representative") shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and waived the Released Parties from any and all Claims, Interests, obligations, rights, suits, judgments, damages, demands, debts, Causes of Action, remedies, and liabilities whatsoever, including**

any derivative Claims asserted on behalf of the Debtors, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or hereinafter arising, in law, equity, or otherwise, that the Debtors, their Estates or any Person (including the Liquidation Trustee and Reclamation Trustee) seeking to exercise the rights of the Debtors or the Debtors' Estates, including without limitation, the Committee and an Estate Representative, would have been entitled to assert (whether individually or collectively), based on or in any way relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Documents, and related agreements, settlements, instruments, or other documents, arising from or related to any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes fraud or willful misconduct. Notwithstanding anything to the contrary in the foregoing, the Debtor Release does not release any post-Effective Date obligations of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

(b) **Upon the Effective Date of the Plan, in connection with the Distributions to the holders of Allowed General Unsecured Claims in accordance with section 3.2 of the Plan, the Debtors, their Estates, and any Person (including the Liquidation Trustee, the Reclamation Trustee, any Estate Representative) shall grant each holder of an Allowed General Unsecured Claim an Avoidance Action Release.**

(c) **Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases described in this Article XII, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release and Avoidance Action Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties or the holders of Allowed General Unsecured Claims, as applicable; (2) a good-faith settlement and compromise of such claims; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors or their Estates asserting any Claim or Cause of Action released pursuant to the Debtor Release or Avoidance Action Release.**

7.14 ***Third-Party Release.***

(a) **The Third-Party Release shall only be applicable to holders of Claims against a Debtor who *opt in* to the Third Party Release provided in the Plan.**

(b) **As of the Effective Date, to the fullest extent permitted by applicable law, the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and waived the Liquidation Trust, the Reclamation Trust,**

and all Released Parties from any and all Claims, Interests, obligations, rights, suits, judgments, damages, demands, debts, Causes of Action, remedies, and liabilities whatsoever, including any derivative Claims asserted on behalf of the Debtors, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or hereinafter arising, in law, equity, or otherwise, that such Person would have been entitled to assert (whether individually or collectively), based on or in any way relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Documents, and related agreements, settlements, instruments, or other documents, arising from or related to any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes fraud or willful misconduct. Notwithstanding anything to the contrary in the foregoing, the Third-Party Release does not release any post-Effective Date obligations of any party under the Plan, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, or any indemnification, exculpation, insurance or advancement of expenses obligations, reimbursement of expenses obligations, obligations arising from the ownership of equity or debt securities or other Interests in the Debtors, or any wages, overtime, bonus or employee benefit (including health, welfare, or retirement benefits) obligations owed to any Releasing Party.

(c) **Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained in the Plan, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of the claims released by the Third-Party Release; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Releasing Parties asserting any claim or cause of action released pursuant to the Third-Party Release.**

7.15 ***Exculpation and Limitation of Liability.***

Except as otherwise specifically provided in the Plan and to the extent not prohibited by applicable law, no Exculpated Party shall have or incur, and each Exculpated Party shall be released and exculpated from, any Exculpated Claim, obligation, Cause of Action, or liability for any Exculpated Claim; *provided*, *however*, that the foregoing exculpation shall have no effect on the liability of any Person that results from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; *provided*, *further*, that in all respects such Persons shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties (and each of their respective affiliates, agents, directors, officers, employees, advisors, and attorneys) have complied with the applicable provisions of the

Bankruptcy Code with regard to the solicitation and distribution of the Plan and the Plan Distributions and, therefore, are not and shall not be liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such Plan Distributions.

7.16 ***Injunction Related to Releases and Exculpation.***

Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan, or Confirmation Order, all entities who have held, hold, or may hold Claims against or Interests in the Debtors are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, their Estates, the Liquidation Trust, the Reclamation Trust, the Disbursing Agent, the Released Parties, or the Exculpated Parties on account of any such Claims or Interests including, but not limited to: (1) commencing or continuing in any manner any action or other proceeding of any kind; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order; (3) creating, perfecting, or enforcing any encumbrance of any kind; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from the Debtors' Estates, the Liquidation Trust, or the Reclamation Trust, notwithstanding an indication in a proof of Claim or Interest or otherwise that such holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise; (5) commencing or continuing in any manner any action or other proceeding of any kind that does not comply with or is inconsistent with the Plan, including any right of action against an Exculpated Party for any Exculpated Claim, obligation, Cause of Action, or liability for any Exculpated Claim; and (6) taking any actions to interfere with the implementation or consummation of the Plan; *provided*, *however*, that nothing in the Plan shall preclude any entity from exercising rights pursuant to and consistent with the terms of the Plan or the Confirmation Order.

7.17 ***Retention of Causes of Action/Reservation of Rights.***

The Liquidation Trustee may object to, seek to estimate, seek to subordinate, compromise, or settle any and all Claims against the Debtors and Causes of Action of the Debtors that have not already been deemed Allowed Claims as of the Effective Date. The Liquidation Trustee shall have the absolute right to pursue or not to pursue any and all Liquidation Trust Assets as it determines in the best interests of the Liquidation Trust Beneficiaries, and consistent with the purposes of the Liquidation Trust, and shall have no liability for the outcome of its decision except for any damages caused by willful misconduct or gross negligence. Liquidation Trust Causes of Action may only be prosecuted or settled by the Liquidation Trustee, in its sole discretion. The Liquidation Trust Causes of Action will be transferred to the Liquidation Trust on the Effective Date.

7.18 ***Indemnification Obligations.***

The Debtors shall assume and assign to the Liquidation Trust their indemnification obligations to current and former directors and officers of the Company, which shall in no way affect the rights and obligations of the insureds under the "tail" directors and officers insurance coverage purchased pre-petition.

ARTICLE VIII

CONFIRMATION OF THE PLAN OF LIQUIDATION

8.1 *Confirmation Hearing.*

Section 1128(a) of the Bankruptcy Code requires the bankruptcy court, after appropriate notice, to hold a hearing on confirmation of a chapter 11 plan.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a chapter 11 plan of liquidation. Any objection to confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules, must set forth the name of the objector, the nature and amount of Claims or Interests held or asserted by the objector against the particular Debtor or Debtors, the basis for the objection and the specific grounds therefor, and must be filed with the Clerk of the Bankruptcy Court electronically using the Bankruptcy Court's Case Management/Electronic Case File ("CM/ECF") System at https://ecf.wvsb.uscourts.gov/ (a CM/ECF password will be required),[13] or by mailing a hard copy of such objection to the Clerk of the Bankruptcy Court, United States Bankruptcy Court, Robert C. Byrd U.S. Courthouse, 300 Virginia Street East, Room 3200, Charleston, West Virginia 25301, together with proof of service, and served upon: (i) Blackjewel L.L.C., PO Box 1010, Scott Depot, WV 25560, Attn: David J. Beckman (dave.beckman@fticonsulting.com); (ii) counsel to the Debtors, Squire Patton Boggs (US) LLP, 201 E. Fourth Street, Suite 1900, Cincinnati, Ohio 45202, Attn: Stephen D. Lerner (stephen.lerner@squirepb.com), Nava Hazan (nava.hazan@squirepb.com) and Travis A. McRoberts (travis.mcroberts@squirepb.com); (iii) co-counsel to the Debtors, Supple Law Office PLLC, 801 Viand Street, Point Pleasant, West Virginia 25550, Attn: Joe Supple (supplelawoffice@.com); (iv) counsel to United Bank, Inc., Steptoe & Johnson PLLC, P.O. Box 1588, Charleston, West Virginia 25326-1588, Attn: Joseph G. Bunn (joseph.bunn@steptoe-johnson.com); (v) counsel to the Creditors' Committee, Whiteford Taylor & Preston, LLP, 10 S. Jefferson Street, Suite 1110, Roanoke, Virginia 24011, Attn: Brandy M. Rapp (brapp@wtplaw.com) and Michael Roeschenthaler (MRoeschenthaler@wtplaw.com); and (vi) the Office of the U.S. Trustee for the Southern District of West Virginia, 2025 United States Courthouse, 300 Virginia Street, East, Charleston, West Virginia 25301, Attn: Gary O. Kinder (gary.o.kinder@usdoj.gov). Bankruptcy Rule 9014 governs objections to confirmation of the Plan. UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

8.2 *Confirmation.*

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of section 1129(a) of the Bankruptcy Code have been satisfied with respect to the Plan.

[13] A CM/ECF password may be obtained via the Bankruptcy Court's CM/ECF website at https://ecf.wvsb.uscourts.gov/.

(a) **Confirmation Requirements.**

Confirmation of a chapter 11 plan under section 1129(a) of the Bankruptcy Code requires, among other things, that:

- the plan complies with the applicable provisions of the Bankruptcy Code;
- the proponent of the plan has complied with the applicable provisions of the Bankruptcy Code;
- the plan has been proposed in good faith and not by any means forbidden by law;
- any plan payment made or to be made by the proponent under the plan for services or for costs and expenses in, or in connection with, the chapter 11 case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable;
- the proponent has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in the plan with the debtor, or a successor to the debtor under the plan. The appointment to, or continuance in, such office by such individual must be consistent with the interests of creditors and equity security holders and with public policy and the proponent must have disclosed the identity of any insider that the reorganized debtor will employ or retain, and the nature of any compensation for such insider;
- with respect to each impaired class of claims or interests, either each holder of a claim or interest of such class has accepted the plan, or will receive or retain under the plan, on account of such claim or interest, property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated on such date under chapter 7 of the Bankruptcy Code;
- subject to the "cramdown" provisions of section 1129(b) of the Bankruptcy Code, each class of claims or interests has either accepted the plan or is not impaired under the plan;
- except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that allowed administrative expenses and priority claims will be paid in full on the effective date (except that holders of priority tax claims may receive deferred Cash payments of a value, as of the effective date of the plan, equal to the allowed amounts of such claims and that holders of priority tax claims may receive on account of such claims deferred Cash payments, over a period not exceeding 5 years after the date of assessment

of such claims, of a value, as of the effective date, equal to the allowed amount of such claims);

- if a class of claims is impaired, at least one (1) impaired class of claims has accepted the plan, determined without including any acceptance of the plan by any insider holding a claim in such class; and

- confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

The Debtors believe that:

- the Plan satisfies all of the statutory requirements of chapter 11 of the Bankruptcy Code;

- the Debtors, as the proponents of the Plan, have complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code; and

- the Plan has been proposed in good faith.

Set forth below is a summary of certain relevant statutory confirmation requirements.

(i) *Acceptance*.

Claims in Classes 1, 2, and 3 are Impaired under the Plan and are entitled to vote to accept or reject the Plan. Classes 4, 5, and 6 are Impaired and not receiving any property under the Plan, and thus are deemed to have rejected the Plan.

Because certain Classes are deemed to have rejected the Plan, the Debtors will request confirmation of the Plan under section 1129(b) of the Bankruptcy Code. The Debtors reserve the right, to alter, amend, modify, revoke or withdraw the Plan, any exhibit, or schedule thereto or any Plan Document to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary. The Debtors believe that the Plan satisfies the "cramdown" requirements of section 1129(b) of the Bankruptcy Code.

The Debtors also will seek confirmation of the Plan over the objection of any individual holders of Claims who are members of an accepting Class. There can be no assurance, however, that the Bankruptcy Court will determine that the Plan meets the requirements of section 1129(b) of the Bankruptcy Code.

(ii) *Unfair Discrimination and Fair and Equitable Test*.

To obtain nonconsensual confirmation of the Plan, it must be demonstrated to the Bankruptcy Court that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to each Impaired, non-accepting Class. The Bankruptcy Code provides a non-exclusive definition of the phrase "fair and equitable" for, respectively, secured creditors, unsecured creditors and holders of

equity interests. In general, section 1129(b) of the Bankruptcy Code permits confirmation notwithstanding non-acceptance by an impaired class if that class and all junior classes are treated in accordance with the "absolute priority" rule, which requires that the dissenting class be paid in full before a junior class may receive anything under the plan.

A chapter 11 plan does not "discriminate unfairly" with respect to a non-accepting class if the value of the cash or securities to be distributed to the non-accepting class is equal to, or otherwise fair when compared to, the value of the distributions to other classes whose legal rights are the same as those of the non-accepting class. The Debtors believe the Plan will not discriminate unfairly against any non-accepting Class.

(iii) *Feasibility*.

The Bankruptcy Code permits a plan to be confirmed only if confirmation is not likely to be followed by liquidation or the need for further financial reorganization of the Debtors or any successor to the Debtors, unless such liquidation or reorganization is proposed in the Plan. The Plan provides for a liquidation of the Debtors' remaining assets and a distribution of the Cash proceeds to creditors in accordance with the priority scheme of the Bankruptcy Code and the terms of the Plan. The ability to make distributions described in the Plan therefore does not depend on future earnings or operations of the Debtors, but only on the orderly liquidation of the Debtors' remaining assets and pursuit of the Litigation Proceedings. In addition, because the Plan proposes a liquidation of all of the Debtors' assets, for purposes of this test, the Debtors have analyzed the ability of the Liquidation Trust to meet its obligations under the Plan. Based on the Debtors' analysis, the Liquidation Trust will have sufficient assets to accomplish its tasks under the Plan. Therefore, the Debtors believe that their liquidation pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code.

(b) **Best Interests Test.**

The "best interests" test requires that the Bankruptcy Court find either:

- that all members of each impaired class have accepted the plan; or
- that each holder of an allowed claim or interest in each impaired class of claims or interests will receive or retain under the plan on account of such claim or interest, property of a value, as of the effective date of the plan, that is not less than the amount such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code on such date.

To determine what the holders of Claims and Interests in each Impaired Class would receive if the Debtors were liquidated under chapter 7 on the Confirmation Date, the Bankruptcy Court must determine the dollar amount that would have been generated from the liquidation of the Debtors' assets and properties in a liquidation under chapter 7 of the Bankruptcy Code.

The Cash that would be available for satisfaction of Claims and Interests would consist of the proceeds from the disposition of the assets and properties of the Debtors, augmented by the Cash held by the Debtors. Such Cash amount would be: (i) first, reduced by the amount of the secured portion of the Allowed Secured Claims; (ii) second, reduced by the costs and expenses of

liquidation under chapter 7 (including the fees payable to a chapter 7 trustee and the fees payable to professionals that such trustee might engage) and such additional administrative claims that might result from the conversion; and (iii) third, reduced by the amount of the Allowed Administrative Expense Claims, Fee Claims, U.S. Trustee Fees, and Allowed Priority Tax Claims. Any remaining net Cash would be allocated to creditors and stakeholders in strict order of priority contained in section 726 of the Bankruptcy Code. Additional claims would arise by reason of the breach or rejection of obligations under unexpired leases and executory contracts.

To determine if the Plan is in the best interests of each Impaired Class, the present value of the distributions from the proceeds of a liquidation of the Debtors' assets and properties, after subtracting the amounts discussed above, must be compared with the value of the property offered to each such Class of Claims under the Plan.

With respect to conversion from chapter 11 to chapter 7 and the related increased costs, delays, and lower recoveries, one bankruptcy judge in the Southern District of New York recently observed that "no new fiduciary could be expected to come up to speed in this case … without a destructive delay … unless he or she were to immediately hire the people that are implementing the wind down, which would be a difficult task without doing any analysis on his or her part, the resulting delay would seriously affect the sale value and greatly diminish the likelihood of there being a recovery here for at least the administrative claimants in full." *In re Hostess Brands, Inc*., No. 12-22052 (Bankr. S.D.N.Y. Nov. 21, 2012), Hr'g Tr. at 148:17-149:6. The Debtor believe the same would be true here and after considering the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in the Chapter 11 Cases, the Debtors have determined that confirmation of the Plan will provide each holder of an Allowed Claim with a recovery that is not less than such holder would have received pursuant to the liquidation of the Debtors under chapter 7.

Moreover, the Debtors believe that the value of distributions to each Class of Allowed Claims in a chapter 7 case would be materially less than the value of distributions under the Plan and any distribution in a chapter 7 case would not occur for a substantial period of time. It is likely that a liquidation of the Debtors' assets could take more than a year to complete, and distribution of the proceeds of the liquidation could be delayed for up to six months after the completion of such liquidation to resolve claims and prepare for distributions. In the likely event litigation was necessary to resolve claims asserted in the chapter 7 case, the delay could be prolonged.

The Debtors, with the assistance of their advisors, have prepared a liquidation analysis that summarizes the Debtors' best estimate of recoveries by holders of Claims and Interests in the event of liquidation as of September 25, 2020 (the "**Liquidation Analysis**"), which is attached hereto as **Exhibit 2**. The Liquidation Analysis provides: (a) a summary of the liquidation values of the Debtors' assets, assuming a chapter 7 liquidation in which a trustee appointed by the Bankruptcy Court would liquidate the assets of the Debtors' estates, and (b) the expected recoveries of the Debtors' creditors and equity interest holders under the Plan.

The Liquidation Analysis contains a number of estimates and assumptions that, although developed and considered reasonable by the Debtors' management, are inherently subject to significant economic and competitive uncertainties and contingencies beyond the control of the Debtors and their management. Additionally, the Liquidation Analysis is based on assumptions

with regard to liquidation decisions that are subject to change and significant economic and competitive uncertainties and contingencies beyond the control of the Debtors and their management. Accordingly, the values reflected might not be realized. The chapter 7 liquidation period is assumed to last 12 to 18 months following the appointment of a chapter 7 trustee, allowing for, among other things, the discontinuation and wind-down of operations, the sale of the operations as going concerns or as individual assets, the collection of receivables and the finalization of tax affairs. All holders of Claims that are entitled to vote to accept or reject the Plan are urged to examine carefully all of the assumptions on which the Liquidation Analysis is based in connection with their evaluation of the Plan.

8.3 ***Standards Applicable to Releases.***

Article 12 of the Plan provides for releases for certain claims against non-Debtors in consideration of services provided to the Debtors and the contributions made by the Released Parties to the Debtors' chapter 11 cases. The Released Parties are, in each case solely in their capacity as such: (a)(i)each Debtor and (2) each of its respective employees, agents, current and former officers, current and former directors, managers, trustees, members, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants; provided that the Hoops Parties shall not receive any release under this Plan; (b) (1) the Committee and (2) each of its members, and each of their respective current employees, agents, officers, directors, managers, trustees, members, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants; and (c) (1) FTI Consulting Inc. and (2) David J. Beckman, individually and in his capacity as interim Chief Executive Officer and Chief Restructuring Officer for the Debtors, to the extent of any purported liability under section 1260(c) of the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.* ("SMCRA") related to Mr. Beckman's or FTI's alleged control, ownership, or operation of the Debtors.

As set forth in the Plan, the releases are given by (i) each Released Party; (ii) all holders of Claims against a Debtor who opt in to the release provided by the Plan.

The released claims and exculpated claims are limited to those claims or causes of action that are based on or in any way relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Documents, and related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct or gross negligence.

The Debtors believe that the releases set forth in the Plan are appropriate because, among other things, the releases are narrowly tailored to the Debtors' restructuring proceedings, and each of the Released Parties has provided value to the Debtors and aided in the chapter 11 process. The Debtors believe that each of the Released Parties has played an integral role in these chapter 11

cases and has expended significant time and resources analyzing and negotiating the issues presented by the Debtors' pre-petition capital structure.

Courts in this circuit and others have determined that releases of non-debtors may be approved as part of a chapter 11 plan upon consent of the affected party. *In re A.H. Robins Co.*, 880 F.2d 694 (4th Cir.1989). The Court of Appeals for the Fourth Circuit adopted the six-factor test set out by the Court of Appeals for the Sixth Circuit in *Class Five Nevada Claimants v. Dow Corning Corp. (In re Dow Corning Corp.),* 280 F.3d 648 (6th Cir. 2002), to determine whether the release of non-debtors is appropriate. The factors that the court will analyze are the following: (1) whether there is an identity of interest between the debtor and the third party, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete assets of the estate; (2) whether there is substantial contribution by the non-debtor of assets to the reorganization; (3) the essential nature of the injunction to the reorganization to the extent that, without the injunction, there is little likelihood of success; (4) if the impaired class or classes "overwhelmingly" vote to accept the plan; (5) whether there is a provision in the plan for payment of all or substantially all of the claims of the class or classes affected by the injunction; and (6) whether a provision of the plan provides an opportunity for those claimants who choose not to settle to recover in full. *National Heritage Found., Inc. v. Highbourne Found.*, No. 13-1608, 2014 WL 2900933 (4th Cir. June 27, 2014). These factors are neither exclusive nor a list of conjunctive requirements. *See id.* (a "debtor need not demonstrate that every *Dow Corning* factor weighs in its favor to obtain approval of a non-debtor release"). Here, each of the non-Debtor Released Parties contributed significantly to the Debtors' chapter 11 process. Additionally, parties entitled to vote on the Plan must opt-in to provide non-Debtor releases consistent with applicable law. Accordingly, the Debtors contend that the circumstances of the Debtors' chapter 11 cases satisfy the *Dow Corning* factors. Further, the Debtors are not aware of any cognizable claims of any material value against the Released Parties that the Debtors or their estates would be releasing in connection with Section 12.4 of the Plan.

8.4 *Classification of Claims and Interests.*

The Debtors believe that the Plan complies with the classification requirements of the Bankruptcy Code, which require that a chapter 11 plan place each claim and interest into a class with other claims or interests that are "substantially similar."

8.5 *Consummation.*

The Plan will be consummated on the Effective Date. The Effective Date shall be the earlier of (i) the first (1st) Business Day on which all of the conditions set forth in Article 11 of the Plan have been satisfied or waived by the Debtors and no stay of the Confirmation Order is in effect and (ii) to the extent any outstanding conditions precedent to consummating the Plan have been waived by the Debtors in accordance with the Plan, seven (7) days after the Confirmation Date

The Plan is to be implemented pursuant to its terms, consistent with the provisions of the Bankruptcy Code.

8.6 *Exemption from Certain Transfer Taxes.*

Pursuant to sections 106, 1141, and 1146(a) of the Bankruptcy Code, any post-Confirmation Date transfer from a Debtor to any Person pursuant to, in contemplation of, or in connection with the

Plan or pursuant to: (a) the issuance, distribution, transfer or exchange of any debt, equity security or other interest in the Debtors; (b) the creation, modification, consolidation or recording of any mortgage, deed of trust or other security interest; (c) the making, assignment or recording of any lease or sublease; or (d) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee or other similar tax or governmental assessment, in each case to the extent permitted by applicable law, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all documents necessary to evidence and implement the provisions of and the distributions to be made under the Plan, including the transfer of the Liquidation Trust Causes of Action to the Liquidation Trust and (ii) any sale or other transfer of the Debtors' assets in connection with the orderly liquidation of such assets, as contemplated by the Plan.

8.7 ***Dissolution of Creditors' Committee.***

The Committee shall be automatically dissolved on the Effective Date and, on the Effective Date, each member of the Committee (including each officer, director, employee, agent, consultant, or representative thereof) and each Professional Person retained by the Committee shall be released and discharged from all further authority, duties, responsibilities, and obligations relating to the Debtors and the Chapter 11 Cases; *provided, however,* that the foregoing shall not apply to any matters concerning any Fee Claims held or asserted by any Professional Persons retained by the Committee.

8.8 ***Modification of Plan.***

The Debtors reserve the right in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend, modify, or supplement the Plan before the entry of the Confirmation Order. In addition, after the Confirmation Date, so long as such action does not materially and adversely affect the treatment of holders of Allowed Claims pursuant to the Plan, the Debtors, the Liquidation Trustee, or the Reclamation Trustee, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan in accordance with section 1127(b) of the Bankruptcy Code to remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. Subject to the foregoing, a holder of a Claim that had accepted the Plan shall be deemed to have accepted the Plan as amended, modified, or supplemented.

8.9 ***Revocation or Withdrawal of the Plan.***

The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan in accordance with the preceding sentence prior to the Confirmation Date as to any or all of the Debtors, or if

confirmation or the Effective Date does not occur with respect to one or more of the Debtors, then, with respect to such Debtors: (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases affected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, such Debtor(s) or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by the Debtors or any other Person.

8.10 ***Retention of Jurisdiction.***

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain the maximum legally permissible jurisdiction over all matters arising out of, and related to the Chapter 11 Cases or the Plan pursuant to, and for purposes of, sections 105(a) and 1142 of the Bankruptcy Code, including, without limitation, jurisdiction to:

(a) allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim, the resolution of any and all objections to the allowance or priority of any Claims and the resolution of any and all issues related to the release of Liens upon payment of a secured Claim;

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

(c) determine any and all disputes among creditors with respect to the priority, amount or secured or unsecured status of their Claims;

(d) resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is a party or with respect to which a Debtor may be liable in any manner and to adjudicate and, if necessary, liquidate any Claims arising therefrom; (b) any potential contractual obligation under any assumed Executory Contract or Unexpired Lease; and (c) any dispute regarding whether a contract or lease is or was an Executory Contract or Unexpired Lease, as applicable;

(e) ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

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

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

(h) resolve any cases, Claims, controversies, suits, disputes, or causes of action that may arise in connection with the occurrence of the Effective Date, confirmation, interpretation, implementation or enforcement of the Plan or the extent of any entity's obligations incurred in connection with or released under the Plan;

(i) hear and determine all Causes of Action that are pending as of the date hereof or that may be commenced in the future, including, but not limited to, the Liquidation Trust Causes of Action and the litigation discussed in sections 5.19 and 5.21 of the Disclosure Statement;

(j) issue and enforce injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with the Effective Date or the consummation, implementation or enforcement of the Plan, except as otherwise provided in the Plan;

(k) resolve any ambiguities between the Liquidation Trust Agreement and the Plan;

(l) resolve any ambiguities between the Reclamation Trust Agreement and the Plan;

(m) enforce the terms of the Liquidation Trust Agreement and to decide any claims or disputes that may arise or result from, or be connected with, the Liquidation Trust Agreement, any breach or default under the Liquidation Trust Agreement or the transactions contemplated by the Liquidation Trust Agreement;

(n) enforce the terms of the Reclamation Trust Agreement and to decide any claims or disputes that may arise or result from, or be connected with, the Reclamation Trust Agreement, any breach or default under the Reclamation Trust Agreement or the transactions contemplated by the Reclamation Trust Agreement;

(o) resolve any matters related to the Liquidation Trust;

(p) resolve any matters related to the Reclamation Trust;

(q) resolve any Disputed Claims;

(r) resolve any cases, controversies, suits, or disputes with respect to the releases, exculpations, and other provisions contained in article 11 of the Plan and enter such orders as may be necessary or appropriate to implement or enforce all such releases, exculpations, and other provisions;

(s) recover all assets of the Debtors and property of the Debtors' Estates wherever located;

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

(u) consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any Bankruptcy Court order, including, without limitation, the Confirmation Order;

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

(w) resolve any other matters that may arise in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan or the Disclosure Statement;

(x) adjudicate any and all disputes arising from or relating to Plan Distributions;

(y) determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code, including requests by Professional Persons for payment of accrued professional compensation;

(z) enforce all orders previously entered by the Bankruptcy Court;

(aa) hear any other matter not inconsistent with the Bankruptcy Code or related statutory provisions setting forth the jurisdiction of the Bankruptcy Court; and

(bb) enter a final decree closing the Chapter 11 Cases.

ARTICLE IX

ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

If the Plan is not consummated, given the sale of substantially all of their operating assets, the Debtors will be unable to generate any future income and will be unable satisfy in full their debt obligations. Accordingly, if the Plan is not confirmed and consummated, the alternatives include:

9.1 *Liquidation Under Chapter 7 of the Bankruptcy Code.*

The Debtors could be liquidated under chapter 7 of the Bankruptcy Code. A discussion of the effect a chapter 7 liquidation would have on the recoveries of the holders of Claims is set forth in Article VIII of this Disclosure Statement. The Debtors believe that liquidation would result in lower aggregate distributions being made to creditors than those provided for in the Plan, which is demonstrated by the Liquidation Analysis discussed in Article VIII and attached as **Exhibit 2** to this Disclosure Statement.

In a liquidation under chapter 11 of the Bankruptcy Code, the assets of the Debtors are liquidated in an orderly fashion over a more extended period of time than in a liquidation under chapter 7, and a trustee need not be appointed. Accordingly, creditors are likely to receive greater recoveries than in a chapter 7 liquidation. A chapter 11 liquidation is therefore preferable to a chapter 7 liquidation.

9.2 *Alternative Plan(s).*

The Debtors have evaluated alternatives to the Plan, including alternative structures and terms of the Plan. The Debtors do not believe that any feasible alternative plan structures exist, and that

the only alternatives to the Plan are (i) the conversion of the Chapter 11 Cases to chapter 7 and liquidation of the Debtors pursuant to chapter 7 and (ii) a structured dismissal of the Chapter 11 Cases. The Debtors do not believe that either of these alternatives is preferable to the Plan, and that the Plan, as described herein, enables holders of Claims to realize the greatest possible value under the circumstances.

9.3 ***Dismissal of the Chapter 11 Cases.***

Dismissal of the Chapter 11 Cases would have the effect of restoring (or attempting to restore) all parties to the *status quo ante*. Upon dismissal of the Chapter 11 Cases, the Debtors would lose the protection of the Bankruptcy Code, thereby requiring, at the very least, an extensive and time consuming process of negotiations with their creditors, possibly resulting in costly and protracted litigation in various jurisdictions. Moreover, holders of Secured Claims may be permitted to foreclose upon the assets that are subject to their Liens. Dismissal may also permit certain unpaid unsecured creditors to obtain and enforce judgments against the Debtors. Accordingly, the Debtors believe that dismissal of the Chapter 11 Cases is not a viable alternative to the Plan.

THE DEBTORS BELIEVE THAT CONFIRMATION OF THE PLAN IS PREFERABLE TO ANY ALTERNATIVE BECAUSE THE PLAN MAXIMIZES THE AMOUNT OF DISTRIBUTIONS TO ALL HOLDERS OF CLAIMS AND ANY ALTERNATIVE TO CONFIRMATION OF THE PLAN WILL RESULT IN SUBSTANTIAL DELAYS IN THE DISTRIBUTION OF ANY RECOVERIES. THEREFORE, THE DEBTORS RECOMMEND THAT ALL HOLDERS OF IMPAIRED CLAIMS ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN.

ARTICLE X

CERTAIN RISK FACTORS TO BE CONSIDERED

Important Risks to Be Considered

Holders of Claims should read and consider carefully the following risk factors and the other information in this Disclosure Statement, the Plan, the Plan Supplement and the other documents delivered or incorporated by reference in this Disclosure Statement and the Plan, before voting to accept or reject the Plan.

These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation.

10.1 ***Certain Bankruptcy Considerations.***

(a) **General.**

Although the Plan is designed to implement the liquidation of the Debtors' remaining assets and provide distributions to creditors in an expedient and efficient manner, it is impossible to predict

with certainty the amount of time that the Debtors may spend in bankruptcy or to assure parties in interest that the Plan will be confirmed.

If the Debtors are unable to obtain confirmation of the Plan on a timely basis because of challenges to the adequacy of this Disclosure Statement, to confirmation of the Plan, or a failure to satisfy the conditions to consummation of the Plan, they may be forced to remain in bankruptcy for an extended period while they try to develop a different chapter 11 plan that can be confirmed. Such a scenario could result in a material deterioration in the Debtors' assets and likely would diminish recoveries under any subsequent chapter 11 plan. Further, in such event, the Debtors may not have sufficient Cash to fund their operations in bankruptcy for such an extended period.

(b) **Failure to Receive Requisite Acceptances.**

Claims in Classes 1, 2, and 3 are the only Claims entitled to vote to accept or reject the Plan. Although the Debtors believe they will receive the requisite acceptances, the Debtors cannot provide assurances that the requisite acceptances to confirm the Plan will be received for Classes 1, 2, and 3. If the requisite acceptances are not received for Classes 1, 2, or 3, the Debtors will not be able to seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code because at least one (1) Impaired Class will not have voted in favor of the Plan as required by section 1129(a)(10) of the Bankruptcy Code. In such a circumstance, the Debtors may seek to obtain acceptances of an alternative chapter 11 plan, or otherwise, that may not have sufficient support from their necessary creditors for confirmation of a plan, or may be required to liquidate these estates under chapter 7 of the Bankruptcy Code. There can be no assurance that the terms of any such alternative plan would be similar to, or as favorable to the Debtors' creditors as, those proposed in the Plan.

(c) **Failure to Secure Confirmation of the Plan.**

Even if the requisite acceptances are received, the Debtors cannot provide assurances that the Bankruptcy Court will confirm the Plan. A non-accepting holder of Claims or Interests of the Debtors might challenge the balloting procedures and results as not being in compliance with the Bankruptcy Code or the Bankruptcy Rules. Even if the Bankruptcy Court determined that the Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for confirmation have not been met. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, a finding by the Bankruptcy Court that the value of distributions to non-accepting holders of claims and interests within a particular class under the Plan will not be less than the value of distributions such holders would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code. While the Debtors cannot provide assurances that the Bankruptcy Court will conclude that these requirements have been met, the Debtors believe that any non-accepting holders within each Class under the Plan will receive distributions at least as great as would be received following a liquidation under chapter 7 of the Bankruptcy Code when taking into consideration all administrative claims and the costs and uncertainty associated with any such chapter 7 case.

If the Plan is not confirmed, the Plan will need to be revised and it is unclear whether a chapter 11 liquidation of the Debtors' remaining assets could be implemented and what distribution holders

of Claims ultimately would receive with respect to their Claims. If an alternative could not be agreed to, it is possible that the Debtors would have to liquidate their remaining assets in chapter 7, in which case it is likely that holders of Claims would receive substantially less favorable treatment than they would receive under the Plan. There can be no assurance that the terms of any such alternative would be similar to or as favorable to the Debtors' creditors as those proposed in the Plan.

(d) **Failure to Consummate the Plan.**

Section 11.1 of the Plan contains various conditions to consummation of the Plan, including the Confirmation Order having become final and non-appealable, the Debtors having entered into the Plan Documents and all conditions precedent to effectiveness of such agreements having been satisfied or waived in accordance with the terms thereof. As of the date of this Disclosure Statement, there can be no assurance that these or the other conditions to consummation will be satisfied or waived. Accordingly, even if the Plan is confirmed by the Bankruptcy Court, there can be no assurance that the Plan will be consummated.

(e) **Reductions to Estimated Creditor Recoveries.**

The Allowed amount of Claims in each Class could be greater than projected, which in turn, could cause the amount of distributions to creditors to be reduced substantially. The amount of cash realized for the liquidation of the Debtors' remaining assets and recoveries on Liquidation Trust Causes of Action could be less than anticipated, which could cause the amount of distributions to creditors to be reduced substantially.

(f) **Objection to the Amount or Classification of Claims.**

The Debtors reserve the right to object to the amount or classification of any Claim. It is the Debtors' position that the estimates set forth in this Disclosure Statement cannot be relied on by any creditor whose Claim or Interest is subject to an objection. Any such Claim holder may not receive its specified share of the estimated distributions described in this Disclosure Statement.

(g) **Risks Associated with the Liquidation Trust.**

The ultimate amount of Cash available to make distributions to the Liquidation Trust Beneficiaries depends, in part, on the manner in which the Liquidation Trustee operates the Liquidation Trust and the expenses the Liquidation Trustee incurs. The expenses of the Liquidation Trustee will be given priority over distributions to the Liquidation Trust Beneficiaries. As a result, if the Liquidation Trustee incurs professional or other expenses in excess of current expectations, the amount of distributions to the Liquidation Trust Beneficiaries will decrease.

The ultimate amount of Cash available for distributions to the Liquidation Trust Beneficiaries also will be affected by the performance and relative success of the Liquidation Trustee in pursuing the Liquidation Trust Causes of Action. The less successful the Liquidation Trustee is in pursuing such matters, the less Cash there will be available for distribution to the Liquidation Trust Beneficiaries satisfy.

There is a risk that the transfer of the Liquidation Trust Causes of Action to the Liquidation Trust as contemplated by the Plan could be subject to challenge that, if successful, could nullify the transfer of the Liquidation Trust Causes of Action, in whole or in part, and result in the Liquidation Trust being unable to pursue those Liquidation Trust Causes of Action or assert claims in connection therewith.

(h) **Risks Associated with the Reclamation Trust.**

The ultimate amount of Cash available to fund Reclamation Obligations for the benefit of the Reclamation Trust Beneficiaries depends, in part, on the manner in which the Reclamation Trustee operates the Reclamation Trust and the expenses the Reclamation Trustee incurs. The expenses of the Reclamation Trustee will have priority over Reclamation Obligations. As a result, if the Reclamation Trustee incurs professional or other expenses in excess of current expected cost satisfying the Reclamation Obligations, the amount of Cash available to fund Reclamation Obligations will decrease.

The ultimate amount of Cash available for Reclamation Obligations also will be affected by the performance and relative success of the Reclamation Trustee in liquidating Reclamation Trust Assets and divesting the Reclamation Trust of Reclamation Obligations. The less successful the Reclamation Trustee is in monetizing Reclamation Trust Assets and divesting the Reclamation Trust of Reclamation Obligations, the less Cash there will be available for remediation or reclamation of Permitted Areas.

10.2 ***Certain Securities Considerations.***

Section1145(a)(1) of the Bankruptcy Code exempts the offer and sale of securities under a plan from registration under the Securities Act and state securities laws if three (3) principal requirements are satisfied: (1) the securities must be offered and sold under a plan and must be securities of the debtor, an affiliate participating in a joint plan with the debtor or a successor to the debtor under the plan; (2) the recipients of the securities must hold a pre-petition or administrative expense claim against the debtor or an interest in the debtor; and (3) the securities must be issued entirely in exchange for the recipient's claim against or interest in the debtor, or principally in such exchange and partly for cash or property. To the extent that the rights to distributions from the Liquidation Trust are deemed to constitute securities issued in accordance with the Plan, the Debtors believe that such interests satisfy the requirements of section 1145(a)(1) of the Bankruptcy Code and, therefore, such interests are exempt from registration under the Securities Act and applicable state securities laws.

(a) **Non-Transferability.**

Liquidation Trust Beneficiaries should be aware that their rights to distributions from the Liquidation Trust are not transferable. Therefore, there will not be any trading market for such rights, nor will those rights be listed on any public exchange or other market. The lack of liquidity of the rights to distributions from the Liquidation Trust may have a negative impact on their value.

(b) **Uncertainty of Value.**

In addition to the prohibition on the transfer of rights to distributions from the Liquidation Trust as discussed above, the value of such rights will depend on various significant risks and uncertainties, including, without limitation, (a) the success of the Liquidation Trust in securing judgments and settlements on a favorable basis with respect to the Liquidation Trust Causes of Action; (b) the effect of substantial delays in liquidating claims and other contingent assets and liabilities; and (c) the effects of any changes in tax and other government rules and regulations applicable to the Liquidation Trust. All of these risks are beyond the control of the Liquidation Trust and the Liquidation Trustee. The amount of any recovery realized by the Liquidation Trust Beneficiaries will vary depending upon the extent to which these risks materialize. In addition, the resolution of the Liquidation Trust Causes of Action may require a substantial amount of time to be resolved and liquidated. The associated delays could reduce the value of any recovery.

ARTICLE XI

CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

11.1 *Introduction.*

The following discussion is a summary of the proponents' analysis of certain U.S. federal income tax consequences of the consummation of the Plan to the Plan Debtors and certain holders of Claims and Interests. This summary is based on the Tax Code, the Treasury Regulations, judicial authorities, published administrative positions of the Internal Revenue Service ("IRS") and other applicable authorities, all as in effect on the date of this Disclosure Statement and all of which are subject to change or differing interpretations, possibly with retroactive effect. The proponents have not requested, nor do they intend to request, a private letter ruling from the IRS or an opinion of counsel with respect to any of the aspects of the Plan. The discussion below is not binding upon the IRS or any court and does not reflect any independent analysis by the Debtors or the Committee. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein.

This discussion does not apply to holders of Claims that are not "U.S. persons" (as such phrase is defined in the Tax Code) and does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Plan Debtors or to such holders in light of their individual circumstances. This discussion does not address tax issues with respect to such holders subject to special treatment under the U.S. federal income tax laws (including, for example, banks, governmental authorities or agencies, passthrough entities, dealers and traders in securities, insurance companies, financial institutions, tax-exempt organizations, small business investment companies and regulated investment companies). No aspect of state, local, estate, gift or non-U.S. taxation is addressed. The following discussion assumes that each holder of a Claim holds its Claim as a "capital asset" within the meaning of section 1221 of the Tax Code.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF

A CLAIM. ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE U.S. FEDERAL, STATE, LOCAL AND NON-UNITED STATES TAX CONSEQUENCES OF THE PLAN.

11.2 *Federal Income Tax Consequences to Debtors.*

Taxpayers generally must include in gross income the amount of any cancellation of debt income, which is the difference between the amount of a taxpayer's indebtedness that is cancelled and the amount or value of the consideration exchanged therefore. Even if indebtedness of the Debtors is discharged or released under the Plan, the Debtors should not recognize taxable cancellation of debt income if the discharge or release is pursuant to a chapter 11 bankruptcy proceeding. Although the Debtors will not be required to recognize cancellation of indebtedness income, it must instead reduce certain tax attributes by the amount of unrecognized cancellation of indebtedness income after the determination of the tax for the year of discharge or release in the manner prescribed by section 108(b) of the Tax Code. Tax attributes include net operating losses ("NOLs"), capital losses and loss carryovers, certain tax credits and, subject to certain limitations, the tax basis of property.

Pursuant to the Plan, all of the Debtors' remaining assets other than the Reclamation Trust Assets and those sold prior to the Effective Date will be transferred directly or indirectly to Liquidation Trust Beneficiaries. For federal income tax purposes, any such assets transferred to the Liquidation Trust will be treated by the Debtors and by the Liquidation Trust Beneficiaries as having been distributed to the Liquidation Trust Beneficiaries, with such Liquidation Trust Beneficiaries then transferring the assets to the Liquidation Trust in exchange for beneficial interests in the Liquidation Trust. The Debtors will not retain a beneficial interest in the Liquidation Trust; instead, the beneficial interest in the Liquidation Trust will be held by the Liquidation Trust Beneficiaries. It is intended that the Liquidation Trust be treated, for U.S. federal income tax purposes, as a liquidating trust and as a grantor trust, with the Liquidation Trust Beneficiaries receiving Liquidation Trust Interests being treated as the grantors and deemed owners of the Liquidation Trust Assets.

The Debtors' transfer of its assets pursuant to the Plan will constitute a taxable disposition of such assets, and the Debtors will recognize gain or loss based on the difference between the fair market value and the tax basis of the assets transferred. The Debtors expect that they will recognize a loss on the transfer.

11.3 *Federal Income Tax Consequences to Holders of Claims and Interests.*

The U.S. federal income tax consequences to holders of Allowed Claims arising from the distributions pursuant to the Plan may vary, depending upon, among other things: (a) the manner in which a holder acquired an Allowed Claim; (b) the type of consideration received by the holder of an Allowed Claim in exchange for the interest it holds; (c) the nature of the indebtedness owed to it; (d) whether the holder previously claimed a bad debt or worthless securities deduction in respect of the Allowed Claim; (e) whether the holder of the Allowed Claim is a citizen or a resident of the U.S. for tax purposes; (f) whether the holder of the Allowed Claim reports income on the accrual or cash basis method of accounting; and (g) whether the holder receives distributions in more than one (1) taxable year. In addition, where gain or loss is recognized by a holder, the

character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the holder, whether the Allowed Claim constitutes a capital asset in the hands of the holder and how long it has been held or is treated as having been held, and whether the Allowed Claim was acquired at a market discount.

In general, the receipt of Cash and/or interests in the Liquidation Trust in exchange for an Allowed Claim should result in the recognition of gain or loss in an amount equal to the difference between (i) the sum of the amount of any Cash and the fair market value of any interests in the Liquidation Trust received (other than any Cash or interests in the Liquidation Trust attributable to accrued but unpaid interest) and (ii) the holder's tax basis in its Allowed Claim (other than any Claim for accrued but unpaid interest).

If the Claim in the holder's hands is a capital asset, the gain or loss realized will generally be characterized as a capital gain or loss. Such gain or loss will constitute long-term capital gain or loss if the holder held such Claim or Interest for longer than one (1) year or short-term capital gain or loss if the holder held such Claim or Interest for one (1) year or less. If the holder realizes a capital loss, the holder's deduction of the loss may be subject to limitation.

The Liquidation Trustee will determine the fair market value of the assets transferred to the Liquidation Trust and of the beneficial interests in the Liquidation Trust. These values must be used by the Debtors, the Liquidation Trustee, and all beneficiaries of the Liquidation Trust for all federal income tax purposes. It is possible that the IRS may disagree with the valuations for this purpose. If the IRS were to successfully assert that different valuations should apply, the amount of taxable gain or loss recognized by holders of Allowed Claims would be subject to adjustment.

Holders of Claims who were not previously required to include any accrued but unpaid interest in their gross income on a Claim may be treated as receiving taxable interest income taxable at tax rates for ordinary income to the extent any consideration they receive under the Plan is allocable to such interest. Holders of Claims previously required to include in their gross income any accrued but unpaid interest on a claim may be entitled to recognize a deductible loss to the extent such interest is not satisfied under the Plan. Under the Plan, to the extent that any Allowed Claim entitled to a distribution is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, for federal income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the distribution exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest. However, there is no assurance that such allocation will be respected by the IRS for U.S. federal income tax purposes.

A holder of an Allowed Claim who receives, in respect of its Claim, an amount that is less than its tax basis in such claim or equity interest may be entitled to a bad debt deduction under section 166(a) of the Tax Code or a loss under section 165(a) of the Tax Code. The rules governing the character, timing, and amount of these deductions depend upon the facts and circumstances of the holder, the obligor, and the instrument with respect to which a deduction is claimed. Accordingly, holders are urged to consult their tax advisors with respect to their ability to take such a deduction if either: (1) the holder is a corporation; or (2) the Claim constituted (a) a debt created or acquired (as the case may be) in connection with a trade or business of the holder or (b) a debt the loss from the worthlessness of which is incurred in the holder's trade or business. A holder that has

previously recognized a loss or deduction in respect of its claim or equity interest may be required to include in its gross income (as ordinary income) any amounts received under the Plan to the extent such amounts exceed the holder's adjusted basis in such Claim.

Whether the holder of Claims will recognize a loss, a deduction for worthless securities or any other tax treatment will depend upon facts and circumstances that are specific to the nature of the holder and its Claims or Interests. Accordingly, holders of Claims and Interests should consult their own tax advisors.

A holder of a Claim constituting any installment obligation for tax purposes may be required to currently recognize any gain remaining with respect to such obligation if, pursuant to the Plan, the obligation is considered to be satisfied at other than its face value, distributed, transmitted, sold or otherwise disposed of within the meaning of section 453B of the Tax Code.

If a holder of an Allowed Claim purchased the Claim at a discount, the difference may constitute "market discount" for U.S. federal income tax purposes. Any gain recognized by a holder of a debt obligation with market discount should be treated as ordinary interest income to the extent of any market discount accrued on the Claim by the holder on or prior to the date of the exchange.

11.4 ***Consequences of the Liquidation Trust.***

The Liquidation Trust will be organized for the primary purpose of liquidating the assets transferred to it with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidation Trust. Thus, the Liquidation Trust is intended to be classified for federal income tax purposes as a "liquidating trust" within the meaning of Treasury Regulations section 301.7701-4(d). The provisions of the Liquidation Trust Agreement and the Plan are intended to satisfy the guidelines for classification as a liquidating trust that are set forth in Revenue Procedure 94-45, 1994-2 C.B. 684. Under the Plan, all parties are required to treat the Liquidation Trust as a liquidating trust, subject to contrary definitive guidance from the IRS. In general, a liquidating trust is not a separate taxable entity but rather is treated as a grantor trust, pursuant to sections 671 through 679 of the Tax Code, owned by the persons who are treated as transferring assets to the Trust.

No request for a ruling from the IRS will be sought on the classification of the Liquidation Trust. Accordingly, there can be no assurance that the IRS would not take a contrary position to the classification of the Liquidation Trust. If the IRS were to challenge successfully the classification of the Liquidation Trust as a grantor trust, the federal income tax consequences to the Liquidation Trust and the Liquidation Trust Beneficiaries could vary from those discussed in the Plan (including the potential for an entity-level tax). For example, the IRS may characterize some or all of the Liquidation Trust as a grantor trust for the benefit of the Debtors or as otherwise owned by and taxable to the Debtors. Alternatively, the IRS could characterize the Liquidation Trust as a so-called "complex trust" subject to a separate entity-level tax on its earnings, except to the extent that such earnings are distributed during the taxable year.

Consistent with the intended treatment, Liquidation Trust Beneficiaries will be treated for federal income tax purposes as the grantors and owners of their share of the assets held by the Liquidation

Trust. No tax should be imposed on the Liquidation Trust on earnings generated by the assets held by the Liquidation Trust. Instead, each Liquidation Trust Beneficiary holding a beneficial interest in the Liquidation Trust must report on its federal income tax return its allocable share of income, gain, loss, deduction and credit recognized or incurred by the Liquidation Trust. None of the Debtors' loss carryforwards will be available to reduce any income or gain of the Liquidation Trust. Moreover, upon the sale or other disposition (or deemed disposition) of any Liquidation Trust Asset, each Liquidation Trust Beneficiary holding a beneficial interest in the Liquidation Trust must report on its federal income tax return its share of any gain or loss measured by the difference between (1) its share of the amount of cash and/or the fair market value of any property received by the Liquidation Trust in exchange for the Liquidation Trust Asset so sold or otherwise disposed of and (2) such Liquidation Trust Beneficiary's adjusted tax basis in its share of the Liquidation Trust Asset. The character of any such gain or loss to the Liquidation Trust Beneficiary will be determined as if such Liquidation Trust Beneficiary itself had directly sold or otherwise disposed of the Liquidation Trust Asset. The character of items of income, gain, loss, deduction and credit to any Liquidation Trust Beneficiary holding a beneficial interest in the Liquidation Trust, and the ability of the Liquidation Trust Beneficiary to benefit from any deductions or losses, may depend on the particular circumstances or status of the Liquidation Trust Beneficiary.

Given the treatment of the Liquidation Trust as a grantor trust, each Liquidation Trust Beneficiary holding a beneficial interest in the Liquidation Trust has an obligation to report its share of the Liquidation Trust's tax items (including gain on the sale or other disposition of a Liquidation Trust Asset) which is not dependent on the distribution of any cash or other Liquidation Trust Assets by the Liquidation Trust. Accordingly, a Liquidation Trust Beneficiary holding a beneficial interest in the Liquidation Trust may incur a tax liability as a result of owning a share of the Liquidation Trust Assets, regardless of whether the Liquidation Trust distributes cash or other assets. Due to the requirement that the Liquidation Trust maintain certain reserves, the Liquidation Trust's ability to make current Cash distributions may be limited or precluded. In addition, due to possible differences in the timing of income on, and the receipt of cash from the Liquidation Trust Assets, a Liquidation Trust Beneficiary holding a beneficial interest in the Liquidation Trust may be required to report and pay tax on a greater amount of income for a taxable year than the amount of cash received by the Liquidation Trust Beneficiary during the year.

The Liquidation Trust will file annual information tax returns with the IRS as a grantor trust pursuant to Treasury Regulations section 1.671-4(a) that will include information concerning certain items relating to the holding or disposition (or deemed disposition) of the Liquidation Trust Assets (e.g., income, gain, loss, deduction and credit). Each Liquidation Trust Beneficiary holding a beneficial interest in the Liquidation Trust will receive a copy of the information returns and must report on its federal income tax return its share of all such items. The information provided by the Liquidation Trust will pertain to Liquidation Trust Beneficiaries who received their interests in the Liquidation Trust in connection with the Plan.

Subject to contrary definitive guidance from the IRS or a court of competent jurisdiction (including the receipt by the Liquidation Trustee of an IRS private letter ruling if the Liquidation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidation Trustee), the Liquidation Trustee may (A) elect to treat any Disputed Claims reserve as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9 and

(B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes.

Accordingly, any Disputed Claims reserve may be subject to tax annually on a separate entity basis on any net income earned with respect to the Liquidation Trust Assets in such reserves, and all distributions from such reserves (which distributions will be net of the related expenses of the reserve) will be treated as received by holders in respect of their Claims as if distributed by the Debtors. All parties (including, without limitation, the Debtors, the Liquidation Trustee and the Liquidation Trust Beneficiaries) will be required to report for tax purposes consistently with the foregoing.

11.5 ***Consequences of the Reclamation Trust.***

The Reclamation Trust will be established for the exclusive purpose of: (i) acting as a successor to the Debtors solely for the purpose of performing, managing, and funding Reclamation Obligations; (ii) own the Reclamation Trust Assets, in a fiduciary capacity; (iii) carry out administrative functions related to the Reclamation Obligations by the Reclamation Trust and other administrative functions as set forth herein; and (iv) ultimately sell or transfer all or part of the Reclamation Trust Assets, if possible. The Reclamation Trust is intended to qualify as a qualified settlement fund (for which no grantor trust election has been made) pursuant to the Treasury Regulations under section 468B of the Tax Code and related Treasury Regulations, with no objective to continue or engage in the conduct of a trade or any other business, except to the extent reasonably necessary to, and consistent with, the purpose of the Reclamation Trust. The Reclamation Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Reclamation Trust Agreement.

No request for a ruling from the IRS will be sought on the classification of the Reclamation Trust. Accordingly, there can be no assurance that the IRS would not take a contrary position to the classification of the Reclamation Trust. If the IRS were to challenge successfully the classification of the Reclamation Trust as a qualified settlement fund, the federal income tax consequences to the Reclamation Trust and the Reclamation Trust Beneficiaries could vary from those discussed in the Plan (including the potential for an entity-level tax). For example, the IRS may characterize some or all of the Reclamation Trust as a qualified settlement fund or as otherwise owned by and taxable to the Debtors. Alternatively, the IRS could characterize the Reclamation Trust as a so-called "complex trust" subject to a separate entity-level tax on its earnings, except to the extent that such earnings are distributed during the taxable year.

The Reclamation Trustee shall be the "administrator," within the meaning of Treasury Regulation Section 1.468B-2(k)(3), of the Reclamation Trust. Subject to definitive guidance from the Internal Revenue Service or a judicial decision to the contrary, the Reclamation Trustee shall file tax returns and pay applicable taxes with respect to the Reclamation Trust in a manner consistent with the provisions of Treasury Regulation Section 1.468B-2. All such taxes shall be paid from the Reclamation Trust Assets.

11.6 ***Information Reporting and Back-Up Withholding.***

The Debtors will withhold all amounts required by law to be withheld from payments of interest and dividends. The Debtors will comply with all applicable reporting requirements of the Tax Code. In general, information reporting requirements may apply to distributions or payments made to a holder of a Claim under the Plan. In addition, backup withholding of taxes will generally apply to payments in respect of an Allowed Claim under the Plan unless, in the case of a U.S. holder, such U.S. Holder provides a properly executed IRS Form W-9 and, in the case of non-U.S. holder, such non-U.S. holder provides a properly executed applicable IRS Form W-8BEN or W-8BEN-E (or otherwise establishes such Non-U.S. holder's eligibility for an exemption).

Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a holder's U.S. federal income tax liability, and a holder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing an appropriate claim for refund with the IRS (generally, a federal income tax return).

In addition, from an information reporting perspective, the Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the holders' tax returns.

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A 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 A HOLDER'S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY, HOLDERS OF CLAIMS OR INTERESTS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS ABOUT THE FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

NO STATEMENT IN THIS DISCLOSURE STATEMENT SHOULD BE CONSTRUED AS LEGAL OR TAX ADVICE. THE DEBTORS AND THEIR PROFESSIONALS DO NOT ASSUME ANY RESPONSIBILITY OR LIABILITY FOR THE TAX CONSEQUENCES THE HOLDER OF A CLAIM OR INTEREST MAY INCUR AS A RESULT OF THE TREATMENT AFFORDED ITS CLAIM OR INTEREST UNDER THE PLAN AND DO NOT REPRESENT WHETHER THERE COULD BE ADDITIONAL TAX EXPOSURE TO THEMSELVES OR THEIR NON-DEBTOR AFFILIATES AS A RESULT OF THE PLAN.

ARTICLE XII

PROCEDURES FOR DISTRIBUTIONS UNDER THE PLAN

12.1 ***Distributions on Account of Claims Allowed as of the Effective Date.***

Except as otherwise provided in the Plan or by Final Order, the Liquidation Trustee may, in its discretion, make initial distributions under the Plan on account of Claims that are Allowed Claims as of the Effective Date on the Initial Distribution Date. For the avoidance of doubt, the Debtors do not expect that any Distributable Cash will be available on the Effective Date to distribute to the Holders of Allowed Claims and that such distributions will be made from Distributable Cash and the proceeds of the Liquidation Trust Assets following the Effective Date as Cash becomes available. All distributions made by the Liquidation Trustee shall comply with the priorities of the Bankruptcy Code, unless otherwise provided under the Plan.

12.2 ***Distributions on Account of Claims Allowed After the Effective Date.***

(a) Except as otherwise provided in the Plan or by Final Order, the Liquidation Trustee may, in its discretion, make Plan Distributions on account of a Disputed Claim that becomes an Allowed Claim after the Effective Date shall be made on the Distribution Date that is at least 30 days after the Disputed Claim becomes an Allowed Claim. All distributions made by the Liquidation Trustee shall comply with the priorities of the Bankruptcy Code, unless otherwise provided under this Plan.

(b) Notwithstanding any other provision in the Plan, no partial payments and no partial Plan Distributions shall be made with respect to a Disputed Claim until all disputes in connection with such Disputed Claim have been resolved by settlement or Final Order. Furthermore, without a separate order of the Bankruptcy Court, no Plan Distributions shall be made to a claimant from whom property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code until such claimant has paid the amount or returned the property for which it is liable.

12.3 ***Delivery of Plan Distributions.***

(a) **Distribution Record Date.**

As of the close of business on the Distribution Record Date, the Claims Register shall be closed and there shall be no further changes in the record holders of any Claims or Interests. The Debtors and the Disbursing Agent shall have no obligation to recognize any transfer of Claims occurring after the close of business on the Distribution Record Date and shall instead be entitled to recognize and deal for all purposes under this Plan with only those holders of records as of the close of business on the Distribution Record Date. Additionally, with respect to payment of any cure amounts or any cure disputes in connection with the assumption and assignment of the Debtors' executory contracts and unexpired leases, neither the Debtors nor the Disbursing Agent shall have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable

executory contract or unexpired lease, even if such non-Debtor party has sold, assigned, or otherwise transferred its Claim for a Cure Amount

(b) **Address for Plan Distributions.**

Plan Distributions to holders of Allowed Claims shall be made by the Disbursing Agent at (a) the addresses of such holders on the books and records of the Debtors or their agent; or (b) the addresses in any written notice of address change delivered to the Debtors or the applicable Disbursing Agent, including any addresses on any filed proofs of Claim or transfers of Claim filed with the Bankruptcy Court.

(c) **Setoffs.**

In the event that the value of a Debtor's claim, right or Cause of Action against a particular claimant is undisputed, resolved by settlement, or has been adjudicated by Final Order of any court, the Liquidation Trustee may set off such undisputed, resolved, or adjudicated amount against any Plan Distributions that would otherwise become due to such claimant. Neither the failure to effectuate such a setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors or the Liquidation Trustee of any claims, rights, or Causes of Action that the Debtors or the Liquidation Trust may possess against such claimant.

(d) ***De Minimis and Fractional Plan Distributions*.**

Notwithstanding anything in the Plan to the contrary, the Liquidation Trustee or Disbursing Agent shall not be required to make on account of any Allowed Claim (a) partial Plan Distributions or payments of fractions of dollars or (b) any Plan Distribution if the amount to be distributed is less than $50.00. Whenever any payment of Cash of a fraction of a dollar pursuant to the Plan would otherwise be required, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or less being rounded down. Any funds so withheld and not distributed shall be held in reserve and distributed in subsequent distributions. Notwithstanding the foregoing, all Cash shall be distributed in the final distribution of the Liquidation Trust.

(e) **Undeliverable Plan Distributions.**

If any Plan Distribution to any holder is returned as undeliverable, no further distributions to such holder shall be made unless and until the Liquidation Trustee has been notified of the then-current address of such holder, at which time such Plan Distribution shall be made as soon as reasonably practicable thereafter without interest, dividends, or accruals of any kind; *provided, however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and forfeited at the expiration of the later of six months from (i) the Effective Date and (ii) the first Distribution Date after such holder's Claim is first Allowed. After such date, all "unclaimed property" or interests in property shall revert to the Liquidation Trust (notwithstanding any otherwise applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) for redistribution in accordance with the terms of the Plan and the Liquidation Trust Agreement, and the Claim of any holder to such property or interest in property shall be forever barred, estopped, and enjoined from asserting any Claim against any of the Debtors, the Estates,

the Liquidation Trust, or the Liquidation Trustee. Nothing contained in the Plan shall require the Liquidation Trustee to attempt to locate any holder of an Allowed Claim.

(f) **Failure To Present Checks.**

Any check issued by the Liquidation Trust or the Disbursing Agent on account of an Allowed Claim shall be null and void if not negotiated within 120 days after the issuance of such check. Requests for reissuance of any check shall be made directly to the Liquidation Trust by the holder of the relevant Allowed Claim with respect to which such check originally was issued. If any holder of an Allowed Claim holding an un-negotiated check does not request reissuance of that check within six months after the date the check was mailed or otherwise delivered to the holder, that Allowed Claim shall be released and the holder thereof shall be forever barred, estopped, and enjoined from asserting any Claim against any of the Debtors, the Liquidation Trust or the Liquidation Trustee. In such cases, any Cash held for payment on account of such Claims shall be property of the Liquidation Trust, free of any Claims of such holder with respect thereto, and shall be redistributed to the other holders of Allowed Claims in accordance with the Plan and Liquidation Trust Agreement.

12.4 ***Claims Paid or Payable by Third Parties.***

(a) **Claims Paid by Third Parties.**

To the extent the holder of a Claim receives payment on account of such Claim from a party that is not a Debtor or the Liquidation Trust, the Liquidation Trustee shall reduce the Claim (in full or to the extent of payment by the third party), and such Claim shall be disallowed to the extent of payment from such third party without an objection to such Claim having to be filed and without further notice to, action, order or approval of the Bankruptcy Court. Further, to the extent a holder of a Claim receives a Plan Distribution on account of such Claim and receives payment from a party that is not a Debtor or the Liquidation Trust on account of such Claim, such holder shall, within 14 days of receipt thereof, repay or return the distribution to the Liquidation Trustee, to the extent the holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such Plan Distribution. The failure of such holder to timely repay or return such Plan Distribution shall result in such holder owing the Liquidation Trust annualized interest at the federal judgment rate on such amount owed for each Business Day after the 14-day grace period specified above until such amount is repaid.

(b) **Claims Payable by Insurance.**

Holders of Claims that are covered by the Debtors' insurance policies shall seek payment of such Claims from applicable insurance policies, provided that the Debtors and the Liquidation Trust, as applicable, shall have no obligation to pay any amounts in respect of pre-petition deductibles or self-insured retention amounts. No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to any of the Debtors' insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policies. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the Debtors or the Liquidation Trustee, as applicable, may direct the Claims

Agent to expunge the applicable portion of such Claim from the Claims Register without a Claim objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

(c) **Applicability of Insurance Policies.**

Distributions to holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Except as otherwise released, enjoined or exculpated pursuant to article 11 of the Plan against the Released Parties and the Exculpated Parties, nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors, the Liquidation Trust, or any Person may hold against any other Person, including insurers under any policies of insurance, nor shall anything contained in the Plan constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

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

Other than as specifically provided in the Plan, the Confirmation Order, or other order of the Bankruptcy Court, or required by applicable bankruptcy or non-bankruptcy law, post-petition interest shall not accrue or be paid on any pre-petition Claim, and no holder of a pre-petition Claim shall be entitled to interest accruing on such Claim on or after the Petition Date.

ARTICLE XIII

PROCEDURES FOR RESOLVING CLAIMS

13.1 ***Allowance of Claims.***

After the Effective Date, the Liquidation Trustee shall have and retain any and all rights and defenses, including rights of setoff, that the Debtors had with respect to any Claim. Except as expressly provided in the Plan or in any order entered in the Debtors' Chapter 11 Cases before the Effective Date (including, without limitation, the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed an Allowed Claim under the Plan or the Bankruptcy Code or a Final Order has been entered allowing such Claim, including, without limitation, the Confirmation Order.

13.2 ***Objections to Claims.***

(a) After the Confirmation Date but before the Effective Date, the Debtors, and after the Effective Date, the Liquidation Trustee, shall have the exclusive authority to file objections to Claims, settle, compromise, withdraw, or litigate to judgment objections to any and all Claims. From and after the Effective Date, the Liquidation Trustee may settle or compromise any Disputed Claim without any further notice to or action, order, or approval of the Bankruptcy Court. The Liquidation Trustee shall have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval of the Bankruptcy Court.

(b) Any objections to Claims shall be served and filed on or before the later of: (a) the date that is 180 days after the Effective Date (provided that such date may be extended by up to an

additional 180 days upon notice of the Liquidation Trustee without the need for any order of the Bankruptcy Court, and any further extensions thereafter upon a motion by the Liquidation Trustee for cause); and (b) such other later date as may be fixed by the Bankruptcy Court. The Debtors and the Liquidation Trustee may seek extensions of any date set forth in the Plan or established by the Bankruptcy Court for filing objections to Claims. Any Claims filed after the Bar Date or Administrative Bar Date, as applicable, shall be deemed disallowed and expunged in their entirety without further order of the Bankruptcy Court or any action being required on the part of the Debtors or the Liquidation Trustee, unless the Person seeking to file such untimely Claim has received the Bankruptcy Court's authorization to do so.

13.3 ***Estimation of Claims.***

(a) Before the Effective Date, the Debtors, and after the Effective Date, the Liquidation Trustee, may request that the Bankruptcy Court estimate any Claim, pursuant to section 502(c) of the Bankruptcy Code, regardless of whether any Person has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time (including during the pendency of any appeal with respect to the allowance or disallowance of such Claims).

(b) In the event that the Bankruptcy Court estimates any disputed, contingent, or unliquidated Claim, that estimated amount shall constitute either the amount of such Allowed Claim or a maximum limitation on the amount of such Allowed Claim. If the estimated amount constitutes a maximum limitation on such Allowed Claim, the Debtors or the Liquidation Trustee, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate Plan Distribution on account of such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such holder has filed a motion requesting the right to seek such reconsideration on or before 14 days after the date on which such Claim is estimated. All of the Claims objection, estimation, settlement, and resolution procedures set forth in the Plan are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, resolved, or withdrawn by any mechanism approved by the Bankruptcy Court.

CONCLUSION

The Debtors believe that confirmation and implementation of the Plan is preferable to any of the alternatives described herein because it will provide the greatest recovery to holders of Claims. Other alternatives would involve significant delay, uncertainty and substantial administrative costs and are likely to reduce any return to creditors who hold Claims. The Debtors urge the holders of Impaired Claims in Classes 1, 2, and 3 who are entitled to vote on the Plan to vote to accept the Plan and to evidence such acceptance by returning their Ballots to the Voting Agent so that they will be received not later than 4:00 p.m. (prevailing Eastern Time) on December 10, 2020.

Dated: October 21, 2020

Respectfully submitted,

Blackjewel LLC
on behalf of itself and its affiliated Debtors

By: */s/ David J .Beckman*

David J. Beckman

EXHIBIT 1

Plan

(Attached)

Solicitation Version

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

In re:	)	Chapter 11
	)	
Blackjewel L.L.C., *et al.*,	)	Case No. 19-30289
	)	
Debtors.[1]	)	(Jointly Administered)

FIRST AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION FOR BLACKJEWEL L.L.C. AND ITS AFFILIATED DEBTORS

Dated: October 21, 2020

[1] The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Blackjewel L.L.C. (0823); Blackjewel Holdings L.L.C. (4745); Revelation Energy Holdings, LLC (8795); Revelation Management Corporation (8908); Revelation Energy, LLC (4605); Dominion Coal Corporation (2957); Harold Keene Coal Co. LLC (6749); Vansant Coal Corporation (2785); Lone Mountain Processing, LLC (0457); Powell Mountain Energy, LLC (1024); and Cumberland River Coal LLC (2213). The headquarters for each of the Debtors is located at PO Box 1010, Scott Depot, WV 25560.

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INTRODUCTION[2]

Blackjewel L.L.C. and the other debtors and debtors in possession in the above-captioned cases propose the following joint chapter 11 plan of liquidation. In reviewing the Plan, readers should refer to the Disclosure Statement, including the exhibits and supplements thereto, for a discussion of the Debtors' business history and operations, risk factors, a summary and analysis of the Plan, and certain related matters including, among other things, certain tax matters and other considerations to be issued and distributed under the Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019, and sections 14.2 and 14.3 of the Plan, the Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan prior to its substantial consummation.

The only Persons that are entitled to vote on the Plan are holders of Allowed Claims in Classes 1, 2, and 3. Such Persons are encouraged to read the Plan and the Disclosure Statement and their respective exhibits and schedules in their entirety before voting to accept or reject the Plan. No materials other than the Disclosure Statement and the respective schedules, notices, and exhibits attached thereto and referenced therein have been authorized by the Bankruptcy Court for use in soliciting acceptances or rejections of the Plan.

ARTICLE 1.

DEFINITIONS AND INTERPRETATION

1.1 Definitions.

The following terms shall have the meanings set forth below. Such meanings shall be equally applicable to both the singular and plural forms of such terms.

1.1.1 "***503(b)(9) Claims***" means Claims that have been timely and properly filed prior to the Bar Date and that are granted administrative expense priority treatment pursuant to section 503(b)(9) of the Bankruptcy Code.

1.1.2 "***510 Claims***" means Claims against any of the Debtors that are subordinated pursuant to section 510(b) or (c) of the Bankruptcy Code.

1.1.3 "***Administrative Bar Date***" means (i) November 4, 2019 for Administrative Expense Claims arising from the Petition Date through October 14, 2019, as established by the *Order (I) Setting Bar Dates for Filing Proofs of Claim Including Requests for Payment Under Section 503(B)(9) of the Bankruptcy Code, (II) Setting a Bar Date for the Filing of Requests for Allowance of Administrative Expense Claims, (III) Establishing the Amended Schedules Bar Date and the Rejection Damages Bar Date, (IV) Approving the Form of and Manner for Filing Proofs of Claim, Including 503(B)(9) Requests, (V) Approving Notice of Bar Dates, and (VI) Granting Related Relief* [Docket No. 1188] entered on October 4, 2019, and (ii) the date that is 45 days after the Effective Date for Administrative Expense Claims arising after October 14, 2019.

[2] All capitalized terms used but not defined in this Introduction have the meanings set forth in article 1 of the Plan.

1.1.4 "***Administrative Expense Claim***" means any right to payment constituting a cost or expense of administration of the Chapter 11 Cases of the kind specified in section 503(b) of the Bankruptcy Code and entitled to priority pursuant to sections 328, 330, 363, 364(c)(1), 365, 503(b), 507(a)(2), or 507(b) of the Bankruptcy Code (other than a Fee Claim or U.S. Trustee Fees) incurred during the period from the Petition Date to the Effective Date, including, without limitation: (a) any actual and necessary costs and expenses of preserving the Estates, any actual and necessary costs and expenses of operating the Debtors' business, and any indebtedness or obligations incurred or assumed by any of the Debtors during the Chapter 11 Cases; (b) 503(b)(9) Claims; and (c) any payment to be made under the Plan to cure a default under an assumed executory contract or unexpired lease.

1.1.5 "***Allowed Claim or Interest***" (with respect to a specific type of Claim, if applicable) means (a) any Claim (or a portion thereof) against a Debtor as to which no action to dispute, deny, or otherwise limit recovery with respect thereto, or alter the priority thereof (including a claim objection), has been timely commenced within the applicable period of limitation fixed by the Plan or applicable law, or, if an action to dispute, deny, equitably subordinate, or otherwise limit recovery with respect thereto, or alter priority thereof, has been timely commenced, to the extent such Claim has been allowed (whether in whole or in part) by a Final Order of a court of competent jurisdiction with respect to the subject matter or (b) any Claim against a Debtor or portion thereof that is allowed (i) in any contract, instrument, or other agreement entered into in connection with the Plan, (ii) pursuant to the terms of the Plan, (iii) by Final Order of the Bankruptcy Court, or (iv) with respect to an Administrative Expense Claim (x) that was incurred by a Debtor in the ordinary course of business during the Chapter 11 Cases to the extent due and owing without defense, offset, recoupment, or counterclaim of any kind and (y) that is not otherwise disputed.

1.1.6 "**Avoidance Actions**" means any and all avoidance, recovery, subordination or other actions or remedies that have been or may be brought on behalf of the Debtors or the Estates under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, under sections 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, and 553(b) of the Bankruptcy Code.

1.1.7 "***Avoidance Action Release***" means the release by the Debtors of any Avoidance Action against the holder of an Allowed General Unsecured Claim, provided that the foregoing shall not apply to the Hoops Parties, United Bank, or settlements of Avoidance Actions approved by the Bankruptcy Court during these Chapter 11 Cases.

1.1.8 "***Bankruptcy Code***" means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

1.1.9 "***Bankruptcy Court***" means the United States Bankruptcy Court for the Southern District of West Virginia, or any other court exercising competent jurisdiction over the Chapter 11 Cases or any proceeding therein.

1.1.10 "***Bankruptcy Rules***" means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under 28 U.S.C. § 2075, as amended from

time to time, as applicable to the Chapter 11 Cases, and the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of West Virginia.

1.1.11 "***Bar Date***" means November 4, 2019, as established by the *Order (I) Setting Bar Dates for Filing Proofs of Claim Including Requests for Payment Under Section 503(B)(9) of the Bankruptcy Code, (II) Setting a Bar Date for the Filing of Requests for Allowance of Administrative Expense Claims, (III) Establishing the Amended Schedules Bar Date and the Rejection Damages Bar Date, (IV) Approving the Form of and Manner for Filing Proofs of Claim, Including 503(B)(9) Requests, (V) Approving Notice of Bar Dates, and (VI) Granting Related Relief* [Docket No. 1188] entered on October 4, 2019.

1.1.12 "***Business Day***" means any day other than a Saturday, Sunday, or a "legal holiday," as such term is defined in Bankruptcy Rule 9006(a)(6).

1.1.13 "***Cash***" means the legal currency of the United States and equivalents thereof.

1.1.14 "***Causes of Action***" means, subject to the releases, exculpations, and injunctions set forth in the Plan, any and all actions, causes of action (including Avoidance Actions), suits, accounts, controversies, obligations, judgments, damages, demands, debts, rights, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment, and Claims, whether known or unknown, reduced to judgment or not, liquidated or unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, and whether asserted or assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or tort, arising in law, equity, or otherwise.

1.1.15 "***Chapter 11 Cases***" means the cases that are being jointly administered under chapter 11 of the Bankruptcy Code commenced by the Debtors on the Petition Date in the Bankruptcy Court and captioned *In re Blackjewel L.L.C., et al.*, Case No. 19-30289 (BAK).

1.1.16 "***Claim***" shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

1.1.17 "***Claims Agent***" means Prime Clerk LLC, or any other entity approved by the Bankruptcy Court to act as the Debtors' claims and noticing agent pursuant to 28 U.S.C. § 156(c).

1.1.18 "***Claims Register***" means the official register of Claims against the Debtors maintained by the Claims Agent.

1.1.19 "***Class***" means each category of Claims and Interests established under article 3 of the Plan pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

1.1.20 "***Clearwater Adversary Proceeding***" means that adversary proceeding commenced by the Debtors against Clearwater Investment Holdings, LLC on June 11, 2020, administered under case number 20-03008.

1.1.21 "***Collateral***" means any property or interest in property of the Estates of the Debtors subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance or otherwise invalid under the Bankruptcy Code or applicable non-bankruptcy law.

1.1.22 "***Committee***" means the statutory committee of unsecured creditors appointed in the Chapter 11 Cases in accordance with section 1102 of the Bankruptcy Code, which consists of (a) Walker Machinery Company, (b) Jennmar Corporation of Virginia, (c) CAM Mining, LLC, (d) United Central Industrial Supply Company, LLC; and (e) Kentucky River Properties, LLC. United Central Industrial Supply Company, LLC resigned as a member of the Committee during these Chapter 11 cases.

1.1.23 "***Committee Parties***" means (i) the Committee, (ii) each of the Committee's members acting in their respective capacities as members thereof, and (iii) each of the foregoing parties' current officers, affiliates, partners, directors, employees, agents, members, representatives, advisors, and professionals (including any attorneys, consultants, financial advisors, investment bankers, and other professionals retained by the Committee or by any member thereof), together with their respective successors and assigns; *provided*, *however*, that such attorneys and professional advisors shall only include those that provided services in connection with the Chapter 11 Cases.

1.1.24 "***Confirmation Date***" means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Debtors' Chapter 11 Cases.

1.1.25 "***Confirmation Hearing***" means a hearing to be held by the Bankruptcy Court regarding confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

1.1.26 "***Confirmation Order***" means an order entered by the Bankruptcy Court (a) approving the Disclosure Statement as having adequate information in accordance with section 1125 of the Bankruptcy Code, and (b) confirming the Plan, including all exhibits, appendices, supplements, and related documents.

1.1.27 "***Debtor(s)***" means, individually or collectively, as the context requires: Blackjewel L.L.C.; Blackjewel Holdings L.L.C.; Revelation Energy Holdings, LLC; Revelation Management Corporation; Revelation Energy, LLC; Dominion Coal Corporation; Harold Keene Coal Co. LLC; Vansant Coal Corporation; Lone Mountain Processing, LLC; Powell Mountain Energy, LLC; and Cumberland River Coal LLC.

1.1.28 "***Debtor Release***" means the release given on behalf of the Debtors and their Estates to the Released Parties as set forth in Section 12.3 hereof.

1.1.29 "***Disallowed***" means a finding of the Bankruptcy Court in a Final Order, or provision in the Plan providing, that a Disputed Claim shall not be an Allowed Claim.

1.1.30 "***Disbursing Agent***" means the Liquidation Trustee or such entity or entities designated by the Liquidation Trustee, which entities may include, without limitation, the Liquidation Trustee.

1.1.31 "***Disclosure Statement***" means the disclosure statement in respect of the Plan and all exhibits, schedules, supplements, modifications, and amendments thereto.

1.1.32 "***Disputed***" means, with respect to any Claim against a Debtor, including any portion thereof, any Claim (a) that is listed on the Schedules as contingent, unliquidated, or disputed, (b) as to which the Debtors or any other party in interest has interposed a timely objection or request for estimation in accordance with the Bankruptcy Code and Bankruptcy Rules or that is otherwise disputed by any Debtor or the Liquidation Trustee in accordance with applicable law, which objection, request for estimation, or dispute has not been determined by a Final Order, or (c) with respect to which a proof of claim was required to be filed by order of the Bankruptcy Court but as to which such proof of claim was not timely or properly filed.

1.1.33 "***Distributable Cash***" means any cash generated by the Liquidation Trustee from the liquidation of the Liquidation Trust Assets or the proceeds of the Litigation Proceedings after accounting for the costs and expenses of the Liquidation Trust.

1.1.34 "***Distribution Date***" means the Initial Distribution Date or any of the Periodic Distribution Dates, as applicable.

1.1.35 "***Distribution Record Date***" means, with respect to all Classes for which Plan Distributions are to be made, the third Business Day after the Confirmation Date or such other later date as shall be established by the Bankruptcy Court in the Confirmation Order.

1.1.36 "***Effective Date***" means the date specified by the Debtors in a notice filed with the Bankruptcy Court as the date on which the Plan shall take effect, which date shall be the earlier of (i) the first Business Day on which all of the conditions set forth in Section 11.1 of the Plan have been satisfied or waived and no stay of the Confirmation Order is in effect and (ii) to the extent any outstanding conditions precedent to consummating the Plan have been waived by the Debtors in accordance with the Plan, seven days after the Confirmation Date.

1.1.37 "***Estate***" means each estate created in the Chapter 11 Cases pursuant to section 541 of the Bankruptcy Code.

1.1.38 "***Exculpated Claim***" means any Claim related to any act or omission in connection with, relating to, or arising out of the Debtors' post-petition restructuring efforts, operation and administration of the Debtors' assets, the Chapter 11 Cases, formulation, preparation, dissemination, negotiation, filing, solicitation of acceptances, confirmation, approval, implementation, or administration of the Disclosure Statement, the Plan, the settlements and agreements contained in the Plan, the property to be distributed under the Plan or any contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Debtors' Chapter 11 Cases, the pursuit of entry of a Confirmation Order, the distribution of property under the Plan, or any other related agreement; *provided, however,* that Exculpated Claims shall not include any act or omission that is determined in a Final Order to have constituted willful misconduct or gross negligence. For the avoidance of doubt, no Claim, Cause of Action, obligation, or liability expressly set forth in or preserved by the Plan constitutes an Exculpated Claim.

1.1.39 "***Exculpated Party***" means, collectively, the Debtors, each of the Debtors' current officers and directors that served in such capacities between the Petition Date and the Effective Date (other than the Hoops Parties), the Committee and each of the Committee's members acting in their respective capacities as members thereof, and the Professional Persons of each of the foregoing acting in their respective capacities as such that served in such capacities between the Petition Date and the Effective Date.

1.1.40 "***Executory Contract***" means any contract to which any of the Debtors is a party that is subject to assumption or rejection under sections 365 and 1123 of the Bankruptcy Code.

1.1.41 "***Fee Claim***" means a Claim by a Professional Person for compensation, indemnification, or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 363, 503(b), or 1103(a) of the Bankruptcy Code in connection with the Chapter 11 Cases, including, without limitation, in connection with final fee applications of such Professional Persons.

1.1.42 "***Final Order***" means an order, ruling, or judgment of the Bankruptcy Court (or other court of competent jurisdiction) entered on the docket in the Debtors' Chapter 11 Cases (or on the docket of such other court of competent jurisdiction), which has not been reversed, vacated, or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceeding for a new trial, reargument, or rehearing shall then be pending or (b) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari, or move for a new trial, reargument, or rehearing shall have expired; *provided, however*, that no order or judgment shall fail to be a Final Order solely because of the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure has been or may be filed with respect to such order or judgment; *provided, further*, that the susceptibility of a Claim to a challenge under section 502(j) of the Bankruptcy Code shall not render a Final Order not a Final Order.

1.1.43 "***General Unsecured Claim***" means any unsecured Claim against any Debtor, including (a) trade Claims, (b) unsecured Claims held by a non-Debtor affiliate of the Debtors against the Debtors, and (c) Claims arising out of the rejection of Executory Contracts and Unexpired Leases by any Debtor, but excluding any Intercompany Claim.

1.1.44 "***Governmental Bar Date"*** means December 30, 2019, as established by the *Order (I) Setting Bar Dates for Filing Proofs of Claim Including Requests for Payment Under Section 503(B)(9) of the Bankruptcy Code, (II) Setting a Bar Date for the Filing of Requests for Allowance of Administrative Expense Claims, (III) Establishing the Amended Schedules Bar Date and the Rejection Damages Bar Date, (IV) Approving the Form of and Manner for Filing Proofs of Claim, Including 503(B)(9) Requests, (V) Approving Notice of Bar Dates, and (VI) Granting Related Relief* [Docket No. 1188] entered on October 4, 2019.

1.1.45 "***Hoops Parties***" means the following individuals (1) Jeffrey A. Hoops, (2) Patricia A. Hoops, (3) Jeffery A. Hoops, II; (4) Jeremy A. Hoops; (5) Joshua A. Hoops; (6) Jessica Hoops; (7) Lesley Hoops; (8) Amanda Hoops, (10) Brent T. Walls, and (11) any and all Relatives of Hoops, and the following entities: (1) Genesis Trucking; (2) Construction & Reclamation Services; (3) Lexington Coal Company, LLC; (4) Lexington Coal Royalty Company, LLC; (5) Grand Patrician Resort, LLC; (6) Triple H Real Estate, LLC; (7) Black Diamond Insurance Group, LLC; (8) Clearwater Investment Holdings, LLC; (9) Hoops Dynasty Trust(s); (10) Clearwater Trust(s); (11) JBLCO, LLC; (12) Active Medical; (13) Forrest Machine, LLC; (14) Prep Plant Solutions LLC; (15) Blackjewel Trust; (16) Revelation Energy Trust; (17) Lexington Trust; (18) Walls & Associates, PLLC; (19) Triple H Aviation, LLC; (20) Aquatic Resources Management, LLC; (21) Kewa; (22) Blackjewel Marketing & Sales, LLC; (23) Omni Insurance Group, LLC; (24) Appalachian Medical, LLC; (25) Republic Superior Products; (26) Legends Construction Co., LLC; (27) any and all entities, partnerships, or proprietorships owned and/or controlled, directly or indirectly, by Hoops and/or the Relatives of Hoops (provided that ownership of less than five percent (5%) of the outstanding common stock of any publicly traded corporation shall not be deemed to constitute ownership for the purposes of this clause; and (28) any and all trusts or entities created for the benefit of Hoops or the Relatives of Hoops.

1.1.46 "***Impacted States***" means collectively Tennessee, Virginia, Kentucky, and West Virginia.

1.1.47 "***Impaired***" means impaired within the meaning of section 1124 of the Bankruptcy Code.

1.1.48 "***Initial Distribution Date***" means the date occurring as soon as reasonably practicable after the Effective Date when Plan Distributions shall commence.

1.1.49 "***Intercompany Claim***" means any Claim (including an Administrative Expense Claim), Cause of Action, or remedy asserted against a Debtor by another Debtor. For the avoidance of doubt, Intercompany Claim does not include any Claim asserted against a Debtor by a direct or indirect non-Debtor Subsidiary of any Debtor or by a Debtor against any direct or indirect non-Debtor Subsidiary of any Debtor.

1.1.50 "***Intercompany Interest***" means any Interest held by a Debtor in another Debtor. For the avoidance of doubt, Intercompany Interest does not include any Interest of a Debtor in a direct or indirect non-Debtor Subsidiary of any Debtor or of any direct or indirect non-Debtor Subsidiary in any Debtor.

1.1.51 "***Interest***" means the interest (whether legal, equitable, contractual, or otherwise) of any holders of any membership interests or class of equity securities of any of the Debtors represented by shares of common or preferred stock or other instruments evidencing an ownership interest in any of the Debtors, whether or not certificated, transferable, voting or denominated "stock" or a similar security, or any option, warrant, or right, contractual or otherwise, to acquire any such interest. For the avoidance of doubt, the class of units designated as Senior Preferred Units created on July 14, 2017, by the Debtors and the class of units designated as Series A Units created on July 15, 2017, by the Debtors are deemed to be Interests under the Plan.

1.1.52 "***Lexington Adversary Proceeding***" means that adversary proceeding commenced by the Debtors against Lexington Coal Company, LLC on July 1, 2020, administered under case number 20-03012.

1.1.53 "***Lien***" has the meaning set forth in section 101(37) of the Bankruptcy Code.

1.1.54 "***Liquidation Trust***" means the trust created pursuant to the Liquidation Trust Agreement on the Effective Date in accordance with the Plan, the Confirmation Order and the Liquidation Trust Agreement.

1.1.55 "***Liquidation Trust Agreement***" means the Liquidation Trust Agreement to be dated as of the Effective Date establishing the terms and conditions of the Liquidation Trust, substantially in the form attached to the Plan Supplement.

1.1.56 "***Liquidation Trust Assets***" means the assets to be transferred to the Liquidation Trust on the Effective Date including, without limitation, the Liquidation Trust Causes of Action, the Liquidation Trust Reserve, and all other remaining property and assets of the Debtors, including account receivables and royalty streams (as shown in the Liquidation Analysis attached to the Disclosure Statement). For the avoidance of doubt, the Liquidation Trust Assets shall not include the Reclamation Trust Assets.

1.1.57 "***Liquidation Trust Beneficiaries***" means the holders of the Liquidation Trust Interests.

1.1.58 "***Liquidation Trust Causes of Action***" means collectively, the Causes of Action transferred to the Liquidation Trust on the Effective Date, including any defense or counterclaim to any Disputed Claim and the Litigation Proceedings, but excluding any and all Causes of Action released and/or exculpated pursuant to the terms of the Plan. For the avoidance of doubt, the Liquidation Trust Causes of Action shall not include any Avoidance Action released pursuant to the Avoidance Action Release.

1.1.59 "***Liquidation Trust Interests***" means the uncertificated beneficial interests in the Liquidation Trust representing the right of each holder of an Allowed Claim to receive Cash distributions from the Liquidation Trust on account of such Liquidation Trust Interests in accordance with the terms of this Plan and the Liquidation Trust Agreement.

1.1.60 "***Liquidation Trust Reserve***" means, as more fully described in the Liquidation Trust Agreement, the Cash transferred to the Liquidation Trust on the Effective Date to fund the initial operations of the Liquidation Trust.

1.1.61 "***Liquidation Trustee***" means the person or firm to be appointed to manage the Liquidation Trust pursuant to Section 9.5 of the Plan and the Liquidation Trust Agreement.

1.1.62 "***Litigation Proceedings***" means the United Bank Adversary Proceeding, the Clearwater Adversary Proceeding, the LCC Adversary Proceeding, and any adversary proceeding commenced after the date hereof by the Debtors or the Liquidation Trustee.

For the avoidance of doubt, the Litigation Proceedings shall not include any Avoidance Action released pursuant to the Avoidance Action Release.

1.1.63 "***Non-Intercompany Interest***" means any Interest in a Debtor that is not an Intercompany Interest.

1.1.64 "**Ongoing Professionals**" means those ongoing Professional Persons that continued to represent or assist the Debtors or the Committee in carrying out their duties through the Effective Date.

1.1.65 "***Other Priority Claim***" means any Claim, other than an Administrative Expense Claim, a Fee Claim, or a Priority Tax Claim, entitled to priority in payment as specified in section 507(a) of the Bankruptcy Code.

1.1.66 "***Periodic Distribution Date***" means, unless otherwise ordered by the Bankruptcy Court, the date(s) established from time to time by the Liquidation Trustee after the Initial Distribution Date, until liquidation of the Liquidation Trust Assets is complete.

1.1.67 "***Permitted Areas***" means the lands subject to reclamation or remediation in connection with the Remaining Permits.

1.1.68 "***Person***" shall have the meaning set forth in section 101(41) of the Bankruptcy Code.

1.1.69 "***Petition Date***" means July 1, 2019 and July 24, 2019, as applicable.

1.1.70 "***Plan***" means the joint chapter 11 plan proposed by the Debtors, including, without limitation, all applicable exhibits, supplements, appendices and schedules hereto, either in its present form or as the same may be altered, amended, or modified from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the terms of the Plan.

1.1.71 "***Plan Distributions***" means the distributions to be made under the Plan to holders of Allowed Claims.

1.1.72 "***Plan Documents***" means the documents, other than the Plan, to be executed, delivered, assumed, or performed in connection with the consummation of the Plan, including, without limitation, the documents to be included in the Plan Supplement, any and all exhibits to the Plan, the Disclosure Statement, and any and all exhibits to the Disclosure Statement.

1.1.73 "***Plan Supplement***" means the supplemental appendix to the Plan to be filed no later than ten days prior to the deadline for parties to vote to accept or reject the Plan, which may contain, among other things, draft forms, signed copies, or summaries of material terms, as the case may be, of (i) the Liquidation Trust Agreement, (ii) disclosure of the identity of the Liquidation Trustee, (iii) the Reclamation Trust Agreement, (iv) disclosure of the identity of the Reclamation Trustee, (v) the schedule of Remaining Permits, (vi) the Schedule of Assumed Contracts and Leases, and (vii) additional documents filed with the Bankruptcy Court before the Effective Date as amendments to the Plan Supplement.

1.1.74 "***Priority Tax Claim***" means any Claim of a governmental unit (as defined in section 101(27) of the Bankruptcy Code) of the kind entitled to priority in payment under sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.1.75 "***Professional Person(s)***" means (a) all Persons retained by order of the Bankruptcy Court in connection with the Chapter 11 Cases, pursuant to sections 327, 328, 330, 363, or 1103 of the Bankruptcy Code, excluding any ordinary course professionals; (b) FTI Consulting Inc. and (c) David J. Beckman, in his capacity as interim Chief Executive Officer and Chief Restructuring Officer for the Debtors.

1.1.76 "***Reclamation Obligations***" means all reclamation and remediation obligations associated with the Remaining Permits.

1.1.77 "***Reclamation Trust***" means the trust created pursuant to the Reclamation Trust Agreement on the Effective Date in accordance with the Plan, the Confirmation Order and the Reclamation Trust Agreement.

1.1.78 "***Reclamation Trust Agreement***" means the Reclamation Trust Agreement to be dated as of the Effective Date establishing the terms and conditions of the Reclamation Trust, substantially in the form attached to the Plan Supplement.

1.1.79 "***Reclamation Trust Assets***" means the assets to be transferred to the Reclamation Trust on the Effective Date including, without limitation, (i) the Reclamation Trust Reserve, (ii) the Debtors' interest in any bonds issued by the Sureties in connection with the Remaining Permits; (iii) any underlying property rights relating to or associated with the Remaining Permits; (iv) any personal property of the Debtors' remaining on the Permitted Areas; and (v) any Claims or Causes of Action that the Debtors may have against third-parties relative to the performance of the Reclamation Obligations. For the avoidance of doubt, the Reclamation Trust Assets shall not include the Liquidation Trust Assets.

1.1.80 "***Reclamation Trust Beneficiaries***" means the Sureties and the Impacted States.

1.1.81 "***Reclamation Trust Reserve***" means, as more fully described in the Reclamation Trust Agreement, Cash in an amount equal to the total bonding in place for the Remaining Permits, which shall be transferred by the Sureties to the Reclamation Trust on the Effective Date to fund the initial operations of the Reclamation Trust.

1.1.82 "***Reclamation Trustee***" means the person or firm to be appointed to manage the Reclamation Trust pursuant to Section 10.4 of the Plan and the Reclamation Trust Agreement.

1.1.83 "***Relatives***" means with respect to any natural person, such person's (i) parents, (ii) siblings, (iii) children, (iv) grandparents, (v) grandchildren, (vi) spouses, (vii) spouses of children, (viii) first cousins, (ix) aunts, (x) uncles and (xi) spouse's parents.

1.1.84 "***Released Parties***" means, collectively, in each case solely in their capacity as such: (a) (1) each Debtor and (2) each of its respective employees, agents, current and

former officers, current and former directors, managers, trustees, members, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants; provided that the Hoops Parties shall not receive any release under this Plan; (b) (1) the Committee and (2) each of its members, and each of their respective current employees, agents, officers, directors, managers, trustees, members, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants; and (c) (1) FTI Consulting Inc. and (2) David J. Beckman, individually and in his capacity as interim Chief Executive Officer and Chief Restructuring Officer for the Debtors, to the extent of any purported liability under section 1260(c) of the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.* ("SMCRA") related to Mr. Beckman's or FTI's alleged control, ownership, or operation of the Debtors.

1.1.85 "***Releasing Parties***" means each of the following in its capacity as such: (a) each Released Party; and (b) all holders of Claims against a Debtor who opt in to the release provided by the Plan.

1.1.86 ***"Remaining Permits"*** means those mining and operating permits remaining with the Debtors' Estates as of the Effective Date, a schedule of which is attached to the Plan Supplement, which shall be deemed extinguished as of the Effective Date.

1.1.87 "***Schedule of Assumed Contracts and Leases***" means a schedule of the Executory Contracts and Unexpired Leases to be assumed pursuant to sections 365 and 1123 of the Bankruptcy Code and Article 8.1 of the Plan, which shall be included in the Plan Supplement.

1.1.88 "***Schedules***" means the schedules of assets and liabilities filed in the Chapter 11 Cases, as amended or supplemented from time to time.

1.1.89 "***Secured Claim***" means a Claim: (a) that is secured by a valid, perfected, and enforceable Lien on Collateral, to the extent of the value of the Claim holder's interest in such Collateral as of the Confirmation Date; or (b) to the extent that the holder thereof has a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

1.1.90 "***Subsidiary***" means any corporation, association or other business entity of which at least the majority of the securities or other ownership interest is owned or controlled by a Debtor and/or one or more subsidiaries of the Debtor.

1.1.91 "***Sureties***" means Indemnity National Insurance Company, Lexon Insurance Company, XL Specialty Insurance Company, XL Reinsurance American, Inc. and First Surety Corporation.

1.1.92 "***Tax Code***" means the Internal Revenue Code of 1986, as amended.

1.1.93 "***Third-Party Release***" means the release provision set forth in Section 12.4 hereof.

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

1.1.95 "***Unimpaired***" means, with respect to a Class of Claims, a Class of Claims that is not Impaired.

1.1.96 "***United Bank Adversary Proceeding***" means the adversary proceeding commenced by the Debtors against United Bank on June 1, 2020, administered under case number 20-03007.

1.1.97 "***U.S. Trustee***" means the Acting United States Trustee, Region 4.

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

1.1.99 "***WARN Adversary Proceedings***" means the *David Engelbrecht, Josiah Williamston and Gregory Mefford, on their own behalf and on behalf of all other persons similarly situated v. Blackjewel, LLC*; Adversary Proceeding No. 19-ap-3002 and *Shawn Abner, Jacob Helton and Billy Hatton individually and on behalf of others similarly situated v. Blackjewel, LLC, Revelation Energy, LLC, Lexington Coal Co., LLC, Jeff Hoops, Sr., Jeffery A. Hoops, II*, Adversary Proceeding No. 19-ap-03003.

1.2 Interpretation; Application of Definitions and Rules of Construction.

Unless otherwise specified, all section or exhibit references in the Plan are to the respective section in, or exhibit to, the Plan. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained therein. Any term that is not defined in the Plan, but that is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Plan. The captions and headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of the Plan. Any reference to an entity as a holder of a Claim or Interest includes that entity's successors and assigns.

1.3 Appendices and Plan Documents.

All Plan Documents and appendices to the Plan are incorporated into the Plan by reference and are a part of the Plan as if fully set forth in the Plan. The documents contained in the exhibits to the Plan and in the Plan Supplement shall be approved by the Bankruptcy Court pursuant to the Confirmation Order. Holders of Claims and Interests may inspect a copy of the Plan Documents, once filed, in the Office of the Clerk of the Bankruptcy Court during normal business hours, or via the Claims Agent's website at https://cases.primeclerk.com/blackjewel, or may obtain a copy of the Plan Documents by a request to the Claims Agent as follows:

Blackjewel L.L.C.- Ballot Processing
c/o Prime Clerk LLC
60 East 42nd Street, Suite 1440
New York, NY 10165
Telephone: 844-234-1462
Email: blackjewelballots@PrimeClerk.com

ARTICLE 2.

UNCLASSIFIED CLAIMS

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

2.1 Administrative Expense Claims and Priority Tax Claims.

Each holder of an Allowed Administrative Expense Claim, other than Fee Claims, and Priority Tax Claims, and except to the extent that an Administrative Expense Claim or Priority Tax Claim has already been satisfied during the Chapter 11 Cases or a holder of an Administrative Expense Claim or Priority Tax Claim and the applicable Debtor(s) agree to less favorable treatment, each holder of an Allowed Administrative Expense Claim and Priority Tax Claim shall receive, in full and final satisfaction, compromise, settlement, and release of and in exchange for its Claim, payment in full and in Cash from Distributable Cash until such Claims are satisfied as required by the Bankruptcy Code. For the avoidance of doubt, holders of Allowed Administrative Expense Claims and Priority Tax Claims will not receive any Distribution on the Effective Date and will only receive a Distribution as Distributable Cash becomes available to the Liquidation Trust. Distributions to the holders of Allowed Administrative Expense Claims and Priority Tax Claims shall comply with the priorities of the Bankruptcy Code. Failure to object to confirmation by a holder of an Allowed Administrative Expense Claim or Allowed Priority Tax Claim shall be deemed to be such holder's consent to receive treatment for such Claim that is different from that set forth in section 1129(a)(9) of the Bankruptcy Code.

2.2 Fee Claims.

2.2.1 *Time for Filing Fee Claims.*

Any Professional Person seeking allowance of a Fee Claim must file and serve on the Liquidation Trustee and such other entities as are designated by the Bankruptcy Rules, the Confirmation Order, or other order of the Bankruptcy Court, an application for final allowance of compensation for services rendered and reimbursement of expenses incurred prior to the Effective Date and in connection with the preparation and prosecution of such final application no later than 45 days after the Effective Date; *provided, however,* that the Liquidation Trustee shall pay professionals or other entities retained pursuant to section 9.6.3 of the Plan in the ordinary course of business for any work performed on and after the Effective Date in furtherance of the Plan or as authorized hereunder. Objections to such Fee Claims, if any, must be filed and served pursuant to the procedures set forth in the Confirmation Order no later than 21 days after filing and service of an application for final allowance of fees and expenses.

2.2.2 *Payment of Fee Claims*.

All Professional Persons seeking allowance by the Bankruptcy Court of a Fee Claim, except to the extent that a Fee Claim has already been satisfied during the Chapter 11 Cases or a holder of a Fee Claim and the applicable Debtor(s) agree to less favorable treatment, shall be paid in full and in Cash, consistent with the priorities of the Bankruptcy Code, as Distributable Cash becomes

available to the Liquidation Trust, *provided*, *however*, that the Liquidation Trustee shall without any further notice to or action, order, or approval of the Bankruptcy Court, first allocate Distributable Cash to payment of Allowed Fee Claims held by Ongoing Professionals. For the avoidance of doubt, holders of Allowed Fee Claims will not receive any Distribution on the Effective Date and will only receive a Distribution as Distributable Cash becomes available to the Liquidation Trust.

2.3 U.S. Trustee Fees.

As soon as reasonably practicable following the Initial Distribution Date, the Liquidation Trustee shall pay, in full and in Cash, any U.S. Trustee Fees due as of the Effective Date. On and after the Effective Date, the Liquidation Trustee shall pay the applicable U.S. Trustee Fees as such U.S. Trustee Fees become due, until such time as a final decree is entered closing the applicable Chapter 11 Case.

ARTICLE 3.

CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

3.1 Summary.

The Plan constitutes a separate plan of liquidation for each of the Debtors. The Plan does not seek to effect a substantive consolidation or other combination of the separate Estates of each Debtor, but instead provides that creditors of each Debtor will be permitted to assert their Claims only against the Debtor(s) against which they hold Allowed Claims and will receive a recovery based on the value of the related Estate(s).

3.2 Classification of Claims and Interests.

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims against and Interests in the Debtors. A Claim or Interest is placed in a particular Class for the purposes of voting on the Plan, to the extent applicable, and receiving distributions pursuant to the Plan, to the extent applicable, only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest and has not been paid, released, withdrawn, or otherwise settled prior to the Effective Date. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, U.S. Trustee Fees, and Priority Tax Claims have not been classified.

Class	Claims	Status	Voting Rights
Class 1	Other Priority Claims	Impaired	Entitled to Vote
Class 2	Secured Claims	Impaired	Entitled to Vote
Class 3	General Unsecured Claims	Impaired	Entitled to Vote
Class 4	510 Claims	Impaired	Presumed to Reject

Class	Claims	Status	Voting Rights
Class 5	Intercompany Interests	Impaired	Presumed to Reject
Class 6	Non-Intercompany Interests	Impaired	Presumed to Reject

3.3 Treatment of Claims and Equity Interests.

3.3.1 *Class 1—Other Priority Claims.*

(a) *Classification*: Class 1 consists of the Other Priority Claims against each Debtor.

(b) *Treatment*: Except to the extent that a holder of an Allowed Other Priority Claim has already been satisfied during the Chapter 11 Cases or a holder of an Allowed Other Priority Claim and the applicable Debtor(s) agree to less favorable treatment, each holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction, compromise, settlement, and release of and in exchange for its Claim, payment in full and in Cash from Distributable Cash until such Claims are satisfied as required by the Bankruptcy Code. For the avoidance of doubt, holders of Allowed Other Priority Claims will not receive any Distribution on the Effective Date and will only receive a Distribution as Distributable Cash becomes available to the Liquidation Trust. Distributions to the holders of Allowed Other Priority Claims shall comply with the priorities of the Bankruptcy Code. Failure to object to confirmation by a holder of an Allowed Other Priority Claim shall be deemed to be such holder's consent to receive treatment for such Claim that is different from that set forth in section 1129(a)(9) of the Bankruptcy Code.

(c) *Voting*: Class 1 is Impaired under the Plan and the holders of Allowed Other Priority Claims are entitled to vote to accept or reject the Plan.

3.3.2 *Class 2—Secured Claims.*

(a) *Classification*: Class 2 consists of the Secured Claims against each Debtor.

(b) *Treatment*: Except to the extent that a holder of an Allowed Secured Claim agrees to a less favorable treatment, in full satisfaction, settlement, and release of, and in exchange for such Claim, each holder of an Allowed Secured Claim shall receive one of the following treatments, determined at the option of the Debtors or the Liquidation Trustee, as applicable: (i) the Collateral securing such Allowed Secured Claim to the holder of such Claim; (ii) retention of any valid Liens on Collateral, to the extent of the value of the Claim holder's interest in such Collateral as of the Confirmation Date; or (iii) such other treatment as may be agreed to by the holder of such Claim and the Debtors or the Liquidation Trustee, as applicable. For the avoidance of doubt, no holder of an Allowed Secured Claim

will receive any Cash unless it has a valid, unavoidable lien on such Cash and Cash is available from Distributable Cash to satisfy such Claim.

(c) *Voting*: Class 2 is Impaired under the Plan and the holders of Allowed Secured Claims are entitled to vote to accept or reject the Plan.

3.3.3 *Class 3—General Unsecured Claims.*

(a) *Classification*: Class 3 consists of the General Unsecured Claims against each Debtor.

(b) *Treatment*: Except to the extent that a holder of an Allowed General Unsecured Claim agrees to a less favorable treatment, in full satisfaction, settlement, and release of, and in exchange for such Claim, each holder of an Allowed General Unsecured Claim shall receive its *pro rata* share of remaining Distributable Cash after all Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Fee Claims, Allowed Other Priority Claims, and Allowed Secured Claims (to the extent such Claims are entitled to any Distributable Cash) have been satisfied as required by the Bankruptcy Code. Each holder of an Allowed General Unsecured Claim shall receive an Avoidance Action Release.

(c) *Voting*: Class 3 is Impaired and the holders of Allowed General Unsecured Claims are entitled to vote to accept or reject the Plan.

3.3.4 *Class 4—510 Claims.*

(a) *Classification*: Class 4 consists of all 510 Claims.

(b) *Treatment*: Holders of 510 Claims shall not receive any Plan Distributions on account of such Claims.

(c) *Voting*: Class 4 is Impaired and the holders of 510 Claims are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, holders of 510 Claims are not entitled to vote to accept or reject the Plan.

3.3.5 *Class 5—Intercompany Interests.*

(a) *Classification*: Class 5 consists of all Intercompany Interests.

(b) *Treatment*: On the Effective Date, all Intercompany Interests shall be deemed cancelled and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and there shall be no Plan Distributions to the holders of Intercompany Interests.

(c) *Voting*: Class 5 is Impaired and the holders of Intercompany Interests are conclusively deemed to have rejected the Plan pursuant to section

1126(g) of the Bankruptcy Code. Therefore, holders of Intercompany Interests are not entitled to vote to accept or reject the Plan.

3.3.6 *Class 6—Non-Intercompany Interests.*

(a) *Classification*: Class 6 consists of all Non-Intercompany Interests.

(b) *Treatment*: On the Effective Date, all Non-Intercompany Interests shall be deemed cancelled and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and there shall be no Plan Distributions to the holders of Non-Intercompany Interests.

(c) *Voting*: Class 6 is Impaired and the holders of Non-Intercompany Interests are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, holders of Non-Intercompany Interests are not entitled to vote to accept or reject the Plan.

ARTICLE 4.

ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE OR MORE CLASSES OF CLAIMS OR INTERESTS

4.1 Classes Entitled To Vote.

Classes 1, 2, and 3 are Impaired and entitled to vote to accept or reject the Plan. By operation of law, Classes 4, 5 and 6 are deemed to have rejected the Plan and are not entitled to vote.

4.2 Tabulation of Votes on a Non-Consolidated Basis.

All votes on the Plan shall be tabulated on a non-consolidated basis by Class and by Debtor for the purpose of determining whether the Plan satisfies sections 1129(a)(8) and (10) of the Bankruptcy Code. Notwithstanding the foregoing, the Debtors reserve the right to seek to substantively consolidate any two or more Debtors; *provided*, *however*, that such substantive consolidation does not materially and adversely impact the amount of the Plan Distributions to any Person.

4.3 Acceptance by Impaired Classes.

An Impaired Class of Claims shall have accepted the Plan if, not counting the vote of any holder designated under section 1126(e) of the Bankruptcy Code, (a) the holders of at least two-thirds in dollar amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the holders of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

4.4 Elimination of Vacant Classes.

To the extent applicable, any Class that does not contain any Allowed Claims, Allowed Interests, or Claims or Interests temporarily allowed for voting purposes under Bankruptcy Rule 3018 as of the date of commencement of the Confirmation Hearing, for all Debtors or with respect to any

particular Debtor, shall be deemed to have been eliminated from the Plan for all Debtors or for such particular Debtor, as applicable, for purposes of (a) voting to accept or reject the Plan and (b) determining whether such Class has accepted or rejected the Plan pursuant to section 1129(a)(8) of the Bankruptcy Code.

4.5 Confirmation Pursuant to Section 1129(b) or "Cramdown."

Because certain Classes are deemed to have rejected the Plan, the Debtors will request confirmation of the Plan, as it may be modified and amended from time to time, under section 1129(b) of the Bankruptcy Code with respect to such Classes. Subject to Sections 14.2 and 14.3 of the Plan, the Debtors reserve the right (i) to alter, amend, modify, revoke, or withdraw the Plan or any Plan Document to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary and (ii) to request confirmation of the Plan, as it may be modified, supplemented, or amended from time to time, with respect to any Class that affirmatively votes to reject the Plan.

ARTICLE 5.

MEANS FOR IMPLEMENTATION

5.1 Corporate Existence.

5.1.1 Upon the entry of the Confirmation Order by the Bankruptcy Court, all matters provided for under the Plan involving the corporate structure of the Debtors will be deemed authorized and approved without any requirement of further action by the Debtors, the Debtors' shareholders or members or the Debtors' boards of directors. On the Effective Date, to the extent not otherwise distributed to the holders of Allowed Claims or otherwise provided for in the Plan, each Debtor's assets will be transferred to the Liquidation Trust, which will liquidate and monetize such assets and make distributions to holders of Allowed Claims pursuant to the terms of the Plan.

5.1.2 To the extent not used in the transfer of Liquidation Trust Assets and not completed prior to the Effective Date, the Debtors (and their respective boards of directors) will dissolve as of the Effective Date, and are authorized to dissolve or terminate the existence of wholly owned non-Debtor subsidiaries following the Effective Date as well as any remaining health, welfare or benefit plans. For the avoidance of doubt, once all assets of a Debtor have been transferred to the Liquidation Trust or Reclamation Trust, as applicable, each such Debtor shall be deemed to have dissolved under applicable non-bankruptcy law without the need for any other action by such Debtor or any governmental authority.

5.2 Closing of the Debtors' Chapter 11 Cases.

When (i) all Disputed Claims filed against a Debtor have become Allowed Claims or have been disallowed by Final Order, (ii) all Liquidation Trust Assets that were assets of such Debtor have been liquidated and the proceeds thereof distributed in accordance with the terms of the Plan and (iii) all other actions required to be taken by the Liquidation Trustee under the Plan or the Liquidation Trust Agreement, as applicable, have been taken, the Liquidation Trustee shall seek authority from the Bankruptcy Court to close such Debtor's Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules, provided; however, that the Bankruptcy Court shall retain jurisdiction over the Reclamation Trust after closing the Debtors' Chapter 11 Cases.

5.3 Plan Funding.

The Plan Distributions to be made in Cash under the terms of the Plan shall be funded from Distributable Cash on hand and the proceeds of Liquidation Trust Assets.

5.4 Settlement of Intercompany Matters.

On the Effective Date, pursuant to section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, each Debtor and its respective successors and assigns hereby waives and releases each other and all of its respective successors from any and all Intercompany Claims amongst and between any or all of the Debtors. Such waiver and release shall be effective as a bar to all actions, Causes of Action, suits, Claims, Liens, or demands of any kind with respect to any Intercompany Claim amongst or between any or all of the Debtors. For the avoidance of doubt, the Hoops Parties are not being released under the terms of this Plan.

5.5 Release of Avoidance Actions for Holders of Claims in Class 3.

On the Effective Date, in connection with the Distributions to the holders of Allowed General Unsecured Claims in accordance with section 3.2 of this Plan, the Debtors shall grant each holder of an Allowed General Unsecured Claim an Avoidance Action Release, provided that the foregoing shall not apply to the Hoops Parties, United Bank, or settlements of Avoidance Actions approved by the Bankruptcy Court during these Chapter 11 Cases.

5.6 Monetization of Assets.

The Liquidation Trustee shall, in an expeditious but orderly manner, monetize and convert the Liquidation Trust Assets to Cash and make timely distributions from Distributable Cash to the Liquidation Trust Beneficiaries in accordance with the Plan and the Liquidation Trust Agreement. In so doing, the Liquidation Trustee shall exercise its reasonable business judgment to maximize recoveries. The Liquidation Trustee shall have no liability to any party for the outcome of its decisions in this regard.

5.7 Books and Records.

Books and records for each Debtor shall be maintained by the Liquidation Trustee or Reclamation Trustee, as applicable, to the extent necessary for the administration of the Liquidation Trust and Reclamation Trust. For the avoidance of doubt, to the extent the Debtors' books and records are not necessary for the administration of the Liquidation Trust or Reclamation Trust, and except as previously ordered by the Bankruptcy Court, such books and records may be destroyed or abandoned without further order of the Bankruptcy Court as determined appropriate by the Liquidation Trustee.

5.8 Reporting Duties.

The Liquidation Trustee shall be responsible for filing informational returns on behalf of the Debtors and the Liquidation Trust and paying any tax liability of the Debtors and the Liquidation Trust. Additionally, the Liquidation Trustee shall file (or cause to be filed) any other statements,

returns, reports, or disclosures relating to the Debtors or the Liquidation Trust that are required by any governmental unit or applicable law.

5.9 Tax Obligations.

The Liquidation Trustee shall have the powers of administration regarding all of the Debtors' and the Liquidation Trust's tax obligations, including filing of returns. The Liquidation Trustee shall (i) endeavor to complete and file each Debtor's final federal, state, and local tax returns, (ii) request, if necessary, an expedited determination of any unpaid tax liability of the Debtors or their Estates under section 505(b) of the Bankruptcy Code for all taxable periods of the Debtors ending after the Petition Date through the dissolution of the Liquidation Trust as determined under applicable tax laws, and (iii) represent the interests and accounts of the Liquidation Trust or the Debtors' Estates before any taxing authority in all matters including, without limitation, any action, suit, proceeding or audit.

5.10 Cancellation of Existing Securities and Agreements.

Except for the purpose of evidencing a right to distribution under the Plan and except as otherwise set forth in the Plan, on the Effective Date, all notes, stock, agreements, instruments, certificates, and other documents evidencing any Claim against or Interest in the Debtors shall be cancelled and the obligations of the Debtors thereunder or in any way related thereto shall be fully released.

5.11 Indemnification Obligations.

The Debtors shall assume and assign to the Liquidation Trust their indemnification obligations to current and former directors and officers of the Company (except for any obligations to the Hoops Parties), which shall in no way affect the rights and obligations of the insureds under the "tail" directors and officers insurance coverage purchased prior to the Effective Date.

5.12 Effectuating Documents; Further Transactions; Exemption from Certain Transfer Taxes.

5.12.1 The Debtors, the Liquidation Trustee, or the Reclamation Trustee subject to the terms of the Liquidation Trust Agreement or Reclamation Trust Agreement, as applicable, may take all actions to execute, deliver, file, or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan without the need for any approvals, authorizations, actions, or consents except for those expressly required pursuant thereto. Any officer of each Debtor, the Liquidation Trustee, or the Reclamation Trustee shall be authorized to certify or attest to any of the foregoing actions.

5.12.2 Before, on or after the Effective Date (as appropriate), all matters provided for pursuant to the Plan that would otherwise require approval of the shareholders, directors or members of the Debtors shall be deemed to have been so approved and shall be in effect before, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the shareholders, directors, managers, or partners of the Debtors or the need for any approvals, authorizations, actions or consents.

5.12.3 To the extent permitted by section 1146(a) of the Bankruptcy Code, any post-Confirmation Date transfer from a Debtor to any Person pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (a) the issuance, distribution, transfer or exchange of any debt, equity security or other interest in the Debtors; (b) the creation, modification, consolidation or recording of any mortgage, deed of trust or other security interest; (c) the making, assignment or recording of any lease or sublease; or (d) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee or other similar tax or governmental assessment, in each case to the extent permitted by applicable law, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all documents necessary to evidence and implement the provisions of and the distributions to be made under the Plan, including the transfer of the Liquidation Trust Causes of Action to the Liquidation Trust and (ii) any sale or other transfer of the Debtors' assets in connection with the orderly liquidation of such assets, as contemplated by the Plan.

5.13 Comprehensive Settlement of Claims and Controversies.

Pursuant to Bankruptcy Rule 9019 and in consideration for the Plan Distributions and other benefits provided in the Plan, the provisions of the Plan will constitute a good faith compromise and settlement of all Claims and controversies relating to the rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Allowed Interest or any Plan Distribution on account thereof. The entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such Claims or controversies and the Bankruptcy Court's finding that all such compromises or settlements are: (a) in the best interest of the Debtors, the Estates, and their property and stakeholders; and (b) fair, equitable, and reasonable.

ARTICLE 6.

PROCEDURES FOR RESOLVING CLAIMS

6.1 Allowance of Claims.

After the Effective Date, the Liquidation Trustee shall have and retain any and all rights and defenses, including rights of setoff, that the Debtors had with respect to any Claim. Except as expressly provided in the Plan or in any order entered in the Debtors' Chapter 11 Cases before the Effective Date (including, without limitation, the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed an Allowed Claim under the Plan or the Bankruptcy Code or a Final Order has been entered allowing such Claim, including, without limitation, the Confirmation Order.

6.2 Objections to Claims.

6.2.1 After the Confirmation Date but before the Effective Date, the Debtors, and after the Effective Date, the Liquidation Trustee, shall have the exclusive authority to file objections to Claims, settle, compromise, withdraw, or litigate to judgment objections to any and all Claims. From and after the Effective Date, the Liquidation Trustee may settle or compromise any Disputed Claim without any further notice to or action, order, or approval of the Bankruptcy Court. The Liquidation Trustee shall have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval of the Bankruptcy Court.

6.2.2 Any objections to Claims shall be served and filed on or before the later of: (a) the date that is 180 days after the Effective Date (provided that such date may be extended by up to an additional 180 days upon notice of the Liquidation Trustee without the need for any order of the Bankruptcy Court, and any further extensions thereafter upon a motion by the Liquidation Trustee for cause); and (b) such other later date as may be fixed by the Bankruptcy Court. The Debtors and the Liquidation Trustee may seek extensions of any date set forth in the Plan or established by the Bankruptcy Court for filing objections to Claims. Any Claims filed after the Bar Date or Administrative Bar Date, as applicable, shall be deemed disallowed and expunged in their entirety without further order of the Bankruptcy Court or any action being required on the part of the Debtors or the Liquidation Trustee, unless the Person seeking to file such untimely Claim has received the Bankruptcy Court's authorization to do so.

6.3 Estimation of Claims.

6.3.1 Before the Effective Date, the Debtors, and after the Effective Date, the Liquidation Trustee, may request that the Bankruptcy Court estimate any Claim, pursuant to section 502(c) of the Bankruptcy Code, regardless of whether any Person has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time (including during the pendency of any appeal with respect to the allowance or disallowance of such Claims).

6.3.2 In the event that the Bankruptcy Court estimates any disputed, contingent, or unliquidated Claim, that estimated amount shall constitute either the amount of such Allowed Claim or a maximum limitation on the amount of such Allowed Claim. If the estimated amount constitutes a maximum limitation on such Allowed Claim, the Debtors or the Liquidation Trustee, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate Plan Distribution on account of such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such holder has filed a motion requesting the right to seek such reconsideration on or before 14 days after the date on which such Claim is estimated. All of the Claims objection, estimation, settlement, and resolution procedures set forth in the Plan are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, resolved, or withdrawn by any mechanism approved by the Bankruptcy Court.

ARTICLE 7.

PROVISIONS GOVERNING DISTRIBUTIONS

7.1 Satisfaction of Claims.

Unless otherwise provided in the Plan, any Plan Distributions and deliveries to be made on account of Allowed Claims hereunder shall be in complete satisfaction, settlement, and release of such Allowed Claims. Holders of Allowed Claims may assert such Claims against each Debtor obligated with respect to such Claims; *provided, however,* that in no case shall the aggregate value of all property received or retained under the Plan (or from third parties) by a holder of an Allowed Claim exceed 100% of such holder's underlying Allowed Claim plus any post-petition interest on such Claim, to the extent such interest is permitted by Section 7.6 of the Plan.

7.2 Distributions on Account of Claims Allowed as of the Effective Date.

Except as otherwise provided in the Plan or by Final Order, the Liquidation Trustee may, in its discretion, make initial distributions under the Plan on account of Claims that are Allowed Claims as of the Effective Date on the Initial Distribution Date. For the avoidance of doubt, the Debtors do not expect that any Distributable Cash will be available on the Effective Date to distribute to the Holders of Allowed Claims and that such distributions will be made from Distributable cash and the proceeds of the Liquidation Trust Assets following the Effective Date as Cash becomes available. All distributions made by the Liquidation Trustee shall comply with the priorities of the Bankruptcy Code, unless otherwise provided under the Plan.

7.3 Distributions on Account of Claims Allowed After the Effective Date.

7.3.1 Except as otherwise provided in the Plan or by Final Order, the Liquidation Trustee may, in its discretion, make Plan Distributions on account of a Disputed Claim that becomes an Allowed Claim after the Effective Date shall be made on the Distribution Date that is at least 30 days after the Disputed Claim becomes an Allowed Claim. All distributions made by the Liquidation Trustee shall comply with the priorities of the Bankruptcy Code, unless otherwise provided under the Plan.

7.3.2 Notwithstanding any other provision herein, no partial payments and no partial Plan Distributions shall be made with respect to a Disputed Claim until all disputes in connection with such Disputed Claim have been resolved by settlement or Final Order. Furthermore, without a separate order of the Bankruptcy Court, no Plan Distributions shall be made to a claimant from whom property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code until such claimant has paid the amount or returned the property for which it is liable.

7.4 Delivery of Plan Distributions.

7.4.1 *Distribution Record Date.*

As of the close of business on the Distribution Record Date, the Claims Register shall be closed and there shall be no further changes in the record holders of any Claims or Interests. The Debtors

and the Disbursing Agent shall have no obligation to recognize any transfer of Claims occurring after the close of business on the Distribution Record Date and shall instead be entitled to recognize and deal for all purposes under this Plan with only those holders of records as of the close of business on the Distribution Record Date. Additionally, with respect to payment of any cure amounts or any cure disputes in connection with the assumption and assignment of the Debtors' executory contracts and unexpired leases, neither the Debtors nor the Disbursing Agent shall have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable executory contract or unexpired lease, even if such non-Debtor party has sold, assigned, or otherwise transferred its Claim for a Cure Amount.

7.4.2 *Address for Plan Distributions.*

Plan Distributions to holders of Allowed Claims shall be made by the Disbursing Agent at (a) the addresses of such holders on the books and records of the Debtors or their agent; or (b) the addresses in any written notice of address change delivered to the Debtors or the applicable Disbursing Agent, including any addresses on any filed proofs of Claim or transfers of Claim filed with the Bankruptcy Court.

7.4.3 *Setoffs.*

In the event that the value of a Debtor's claim, right or Cause of Action against a particular claimant is undisputed, resolved by settlement, or has been adjudicated by Final Order of any court, the Liquidation Trustee may set off such undisputed, resolved, or adjudicated amount against any Plan Distributions that would otherwise become due to such claimant. Neither the failure to effectuate such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Liquidation Trustee of any claims, rights, or Causes of Action that the Debtors or the Liquidation Trust may possess against such claimant.

7.4.4 *De Minimis and Fractional Plan Distributions.*

Notwithstanding anything herein to the contrary, the Liquidation Trustee or Disbursing Agent shall not be required to make on account of any Allowed Claim (a) partial Plan Distributions or payments of fractions of dollars or (b) any Plan Distribution if the amount to be distributed is less than $50.00. Whenever any payment of Cash of a fraction of a dollar pursuant to the Plan would otherwise be required, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or less being rounded down. Any funds so withheld and not distributed shall be held in reserve and distributed in subsequent distributions. Notwithstanding the foregoing, all Cash shall be distributed in the final distribution of the Liquidation Trust.

7.4.5 *Undeliverable Plan Distributions.*

If any Plan Distribution to any holder is returned as undeliverable, no further distributions to such holder shall be made unless and until the Liquidation Trustee has been notified of the then-current address of such holder, at which time such Plan Distribution shall be made as soon as reasonably practicable thereafter without interest, dividends, or accruals of any kind; *provided, however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and forfeited at the expiration of the later of six months from (i) the Effective Date and (ii)

the first Distribution Date after such holder's Claim first becomes an Allowed Claim. After such date, all "unclaimed property" or interests in property shall revert to the Liquidation Trust (notwithstanding any otherwise applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) for redistribution in accordance with the terms of the Plan and the Liquidation Trust Agreement, and the Claim of any holder to such property or interest in property shall be forever barred, estopped, and enjoined from asserting any Claim against any of the Debtors, the Estates, the Liquidation Trust, or the Liquidation Trustee. Nothing contained herein shall require the Liquidation Trustee to attempt to locate any holder of an Allowed Claim.

7.4.6 *Failure To Present Checks.*

Any check issued by the Liquidation Trust or the Disbursing Agent on account of an Allowed Claim shall be null and void if not negotiated within 120 days after the issuance of such check. Requests for reissuance of any check shall be made directly to the Liquidation Trust by the holder of the relevant Allowed Claim with respect to which such check originally was issued. If any holder of an Allowed Claim holding an un-negotiated check does not request reissuance of that check within six months after the date the check was mailed or otherwise delivered to the holder, that Allowed Claim shall be released and the holder thereof shall be forever barred, estopped, and enjoined from asserting any Claim against any of the Debtors, the Liquidation Trust or the Liquidation Trustee. In such cases, any Cash held for payment on account of such Claims shall be property of the Liquidation Trust, free of any Claims of such holder with respect thereto, and shall be redistributed to the other holders of Allowed Claims in accordance with the Plan and Liquidation Trust Agreement.

7.5 Claims Paid or Payable by Third Parties.

7.5.1 *Claims Paid by Third Parties.*

To the extent the holder of a Claim receives payment on account of such Claim from a party that is not a Debtor or the Liquidation Trust, the Liquidation Trustee shall reduce the Claim (in full or to the extent of payment by the third party), and such Claim shall be disallowed to the extent of payment from such third party without an objection to such Claim having to be filed and without further notice to, action, order or approval of the Bankruptcy Court. Further, to the extent a holder of a Claim receives a Plan Distribution on account of such Claim and receives payment from a party that is not a Debtor or the Liquidation Trust on account of such Claim, such holder shall, within 14 days of receipt thereof, repay or return the distribution to the Liquidation Trustee, to the extent the holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such Plan Distribution. The failure of such holder to timely repay or return such Plan Distribution shall result in such holder owing the Liquidation Trust annualized interest at the federal judgment rate on such amount owed for each Business Day after the 14-day grace period specified above until such amount is repaid.

7.5.2 *Claims Payable by Insurance.*

Holders of Claims that are covered by the Debtors' insurance policies shall seek payment of such Claims from applicable insurance policies, provided that the Debtors and the Liquidation Trust, as applicable, shall have no obligation to pay any amounts in respect of pre-petition deductibles or

self-insured retention amounts. No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to any of the Debtors' insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policies. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the Debtors or the Liquidation Trustee, as applicable, may direct the Claims Agent to expunge the applicable portion of such Claim from the Claims Register without a Claim objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

7.5.3 ***Applicability of Insurance Policies.***

Distributions to holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Except as otherwise, released, enjoined, or exculpated under Article 12 of this Plan against the Released Parties and the Exculpated Parties, nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors, the Liquidation Trust, or any Person may hold against any other Person, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

7.6 No Post-Petition Interest on Claims.

Other than as specifically provided in the Plan, the Confirmation Order, or other order of the Bankruptcy Court, or required by applicable bankruptcy or non-bankruptcy law, post-petition interest shall not accrue or be paid on any pre-petition Claim, and no holder of a pre-petition Claim shall be entitled to interest accruing on such Claim on or after the Petition Date.

ARTICLE 8.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1 Assumption of Executory Contracts and Unexpired Leases.

On the Effective Date, the Debtors shall assume only the Executory Contracts and Unexpired Leases listed on the Schedule of Assumed Contracts and Leases. The Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumptions described in this Section 8.1 pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of such Executory Contract or Unexpired Lease, including objecting to the proposed cure amount related thereto, will be deemed to have consented to such assumption and agreed to the specified cure amount.

8.2 Rejection of Executory Contracts and Unexpired Leases.

8.2.1 Each Executory Contract and Unexpired Lease shall be deemed automatically rejected in accordance with the provisions of sections 365 and 1123 of the Bankruptcy Code as of the Effective Date, unless any such Executory Contract or Unexpired Lease: (a) is listed on the Schedule of Assumed Contracts and Leases or (b) has already been

assumed pursuant to an order of the Bankruptcy Court or is otherwise assumed pursuant to the terms herein; *provided, however*, that any Executory Contracts or Unexpired Leases that are the subject of a separate motion to assume or reject under section 365 of the Bankruptcy Code pending on the Effective Date shall be treated as provided in the Final Order resolving such motion. The Confirmation Order shall constitute an order of the Bankruptcy Court approving the rejections described in this Section 8.2 pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. The Debtors reserve the right to amend the Schedule of Assumed Contracts and Leases at any time before the Effective Date.

8.2.2 Non-Debtor parties to Executory Contracts or Unexpired Leases that are deemed rejected as of the Effective Date shall have the right to assert any Claim on account of the rejection of such Executory Contracts or Unexpired Leases, including Claims under section 503 of the Bankruptcy Code; *provided* that such Claims must be filed in accordance with the procedures set forth in Section 8.3 of the Plan.

8.3 Claims Based on Rejection of Executory Contracts or Unexpired Leases.

8.3.1 All Claims arising from the rejection of Executory Contracts or Unexpired Leases must be filed with the Claims Agent according to the procedures established for the filing of proof of claim or before the later of (i) the applicable Bar Date and (ii) 30 days after the entry of the order approving the rejection of such Executory Contract or Unexpired Lease. All Claims arising from the rejection of Executory Contracts or Unexpired Leases that are evidenced by a timely filed proof of claim, will be treated as General Unsecured Claims. Upon receipt of the Plan Distribution provided in Section 3.3.3 of the Plan, all such Claims shall be satisfied, settled, and released as of the Effective Date, and shall not be enforceable against the Debtors, the Estates, the Liquidation Trust, or their respective properties or interests in property.

8.3.2 Any Person that is required to file a proof of claim arising from the rejection of an Executory Contract or 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 Estates, the Liquidation Trust, or their respective properties or interests in property, unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein.

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

8.4.1 Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the cure amount in Cash on the Effective Date or on such other terms as the parties to such Executory Contract or Unexpired Lease may agree. In the event of a dispute regarding (i) the amount of any payments to cure such a default, (ii) the ability of the Liquidation Trustee or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code under the Executory Contract or Unexpired Lease to be assumed, or (iii) any other matter pertaining to the proposed assumption, the 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 the assumption.

8.4.2 No later than 14 days prior to the commencement of the Confirmation Hearing, the Debtors shall file a schedule setting forth the proposed cure amount, if any, for each Executory Contract and Unexpired Lease to be assumed pursuant to Section 8.1 of the Plan, and serve such schedule on each applicable counterparty, together with procedures for objecting thereto and resolution of disputes by the Bankruptcy Court. Any objection by a counterparty to the proposed assumption of an Executory Contract or Unexpired Lease or related cure amount must be filed, served and actually received by the Debtors at least ten days prior to the Confirmation Hearing. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption or cure amount will be deemed to have consented to such assumption and agreed to the specified cure amount.

ARTICLE 9.

LIQUIDATION TRUST

9.1 Generally.

On the Effective Date, the Liquidation Trust shall be established and become effective for the benefit of Liquidation Trust Beneficiaries. The powers, authority, responsibilities, and duties of the Liquidation Trust and the Liquidation Trustee are set forth in and shall be governed by the Plan and the Liquidation Trust Agreement. In the event of any conflict between the terms of this Agreement and the Plan, the Plan shall control. The Liquidation Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances, including, without limitation, any and all provisions necessary to ensure the continued treatment of the Liquidation Trust as a grantor trust and the Liquidation Trust Beneficiaries as the grantors and owners thereof for federal income tax purposes. The Debtors shall transfer, without recourse, to the Liquidation Trust all of their right, title, and interest in the Liquidation Trust Assets. Upon the transfer by the Debtors of the Liquidation Trust Assets to the Liquidation Trust, the Debtors will have no reversionary or further interest in or with respect to the Liquidation Trust Assets or the Liquidation Trust.

9.2 Purposes and Establishment of the Liquidation Trust.

9.2.1 On the Effective Date, the Liquidation Trust shall be established pursuant to the Liquidation Trust Agreement for the purposes of liquidating and administering the Liquidation Trust Assets and making distributions on account thereof as provided for under the Plan. The Liquidation Trust is intended to qualify as a liquidation trust pursuant to Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or any other business, except to the extent reasonably necessary to, and consistent with, the purpose of the Liquidation Trust. The Liquidation Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Liquidation Trust Agreement.

9.2.2 On the Effective Date, the Liquidation Trustee, on behalf of the Debtors, shall execute the Liquidation Trust Agreement and shall take all other steps necessary to establish the Liquidation Trust pursuant to the Liquidation Trust Agreement and consistent with the Plan.

9.3 Liquidation Trust Assets.

9.3.1 On the Effective Date, and in accordance with sections 1123 and 1141 of the Bankruptcy Code and pursuant to the terms of the Plan, all right, title and interest in all of the Liquidation Trust Assets, as well as the rights and powers of each Debtor in such Liquidation Trust Assets, shall automatically vest in the Liquidation Trust, free and clear of all Claims and Interests for the benefit of the Liquidation Trust Beneficiaries. Upon the transfer of the Liquidation Trust Assets, the Debtors shall have no interest in or with respect to the Liquidation Trust Assets or the Liquidation Trust. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Liquidation Trust Assets to the Liquidation Trust shall not affect the mutuality of obligations which otherwise may have existed prior to the effectuation of such transfer. Such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax, pursuant to section 1146(a) of the Bankruptcy Code. In connection with the transfer of such assets, any attorney client privilege, work product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Liquidation Trust shall vest in the Liquidation Trust and its representatives, and the Debtors and the Liquidation Trustee are directed to take all necessary actions to effectuate the transfer of such privileges. The Liquidation Trustee shall agree to accept and hold the Liquidation Trust Assets in the Liquidation Trust for the benefit of the Liquidation Trust Beneficiaries, subject to the terms of the Plan and the Liquidation Trust Agreement.

9.3.2 The Debtors, the Liquidation Trustee, the Liquidation Trust Beneficiaries, and any party under the control of such parties will execute any documents or other instruments and shall take all other steps as necessary to cause title to the Liquidation Trust Assets to be transferred to the Liquidation Trust.

9.4 Valuation of Assets.

9.4.1 As soon as practicable after the establishment of the Liquidation Trust, the Liquidation Trustee shall, in good faith and using reasonable efforts, determine the value of the assets transferred to the Liquidation Trust, and the Liquidation Trustee shall apprise, in writing, the Liquidation Trust Beneficiaries of such valuation. The valuation shall be used consistently by all parties (including the Liquidation Trustee and Liquidation Trust Beneficiaries) for all federal income tax purposes.

9.4.2 In connection with the preparation of the valuation contemplated by the Plan and the Liquidation Trust Agreement, the Liquidation Trust shall be entitled to retain such professionals and advisors as the Liquidation Trust shall determine to be appropriate or necessary, and the Liquidation Trustee shall take such other actions in connection therewith as it determines to be appropriate or necessary. The Liquidation Trust shall bear all of the reasonable costs and expenses incurred in connection with determining such value, including the fees and expenses of any professionals retained in connection therewith.

9.5 Appointment of the Liquidation Trustee.

On the Effective Date and in compliance with the provisions of the Plan and the Liquidation Trust Agreement, the Debtors shall appoint a person or firm as Liquidation Trustee. The salient terms

of the Liquidation Trustee's employment, including the Liquidation Trustee's duties and compensation, to the extent not set forth in the Plan, shall be set forth in the Liquidation Trust Agreement or the Confirmation Order.

9.6 Duties and Powers of the Liquidation Trustee.

9.6.1 *Authority*.

The duties and powers of the Liquidation Trustee shall include all powers necessary to implement the Plan with respect to all Debtors and pursue the Liquidation Trust Causes of Action, including the Litigation Proceedings, and monetize, sell, transfer, liquidate and transact with respect to all other Liquidation Trust Assets, including, without limitation, the duties and powers listed herein. The Liquidation Trustee will administer the Liquidation Trust in accordance with the Liquidation Trust Agreement. The Liquidation Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidation Trust Assets, make timely Plan Distributions, and not unduly prolong the duration of the Liquidation Trust.

9.6.2 *Claims and Causes of Action*.

The Liquidation Trustee may object to, seek to estimate, seek to subordinate, compromise, or settle any and all Claims against the Debtors and Causes of Action of the Debtors that have not already been deemed Allowed Claims as of the Effective Date. The Liquidation Trustee shall have the absolute right to pursue or not to pursue any and all Liquidation Trust Assets as it determines in the best interests of the Liquidation Trust Beneficiaries, and consistent with the purposes of the Liquidation Trust, and shall have no liability for the outcome of its decision except for any damages caused by willful misconduct or gross negligence. Liquidation Trust Causes of Action may only be prosecuted or settled by the Liquidation Trustee, in its sole discretion. The Liquidation Trust Causes of Action will be transferred to the Liquidation Trust on the Effective Date.

9.6.3 *Retention of Professionals*.

The Liquidation Trustee may enter into employment agreements and retain professionals to pursue the Liquidation Trust Causes of Action and otherwise advise the Liquidation Trustee and provide services to the Liquidation Trust in connection with the matters contemplated by the Plan, the Confirmation Order, and the Liquidation Trust Agreement without further order of the Bankruptcy Court. Unless an alternative fee arrangement has been agreed to (either by order of the Bankruptcy Court or with the consent of the Liquidation Trustee), professionals retained by the Liquidation Trustee shall be compensated from the proceeds of the Liquidation Trust Assets.

9.6.4 *Distributions; Withholding*.

As described in article 7 herein, the Liquidation Trustee shall make distributions to the Liquidation Trust Beneficiaries in accordance with the terms of the Liquidation Trust Agreement and the Plan, and consistent with the priorities of the Bankruptcy Code, unless otherwise provided under the Plan. The expenses of the Liquidation Trustee will be given priority over distributions to the Liquidation Trust Beneficiaries.

The Liquidation Trustee may withhold from amounts otherwise distributable to any entity any and all amounts, determined in the Liquidation Trustee's sole discretion, required by the Liquidation Trust Agreement, any law, regulation, rule, ruling, directive, treaty, or other governmental requirement. Notwithstanding the above, each holder of an Allowed Claim that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any taxes imposed on such holder by any governmental unit, including income, withholding, and other tax obligations, on account of such Plan Distribution. The Liquidation Trustee or the Disbursing Agent, as applicable, may require, as a condition to the receipt of a Plan Distribution, that the holder complete the appropriate Form W-8 or Form W-9, as applicable to each holder. If the holder fails to comply with such a request within 180 days, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 7.4.5 herein. Further, the Allowed Claim of any such holder shall be deemed released and the holder thereof shall be forever barred, estopped, and enjoined from asserting any Claim against any of the Debtors, the Liquidation Trust or the Liquidation Trustee.

9.6.5 *Reasonable Fees and Expenses.*

The Liquidation Trustee may incur and pay any reasonable and necessary expenses in connection with the performance of its duties under the Plan, including in connection with retaining professionals and/or entering into agreements pursuant to Sections 9.6.3 and 9.6.9 hereof. The Liquidation Trustee shall be paid from the proceeds of the Liquidation Trust Assets.

9.6.6 *Investment Powers.*

The right and power of the Liquidation Trustee to invest the Liquidation Trust Assets, the proceeds thereof, or any income earned by the Liquidation Trust shall be limited to the right and power to invest in such assets only in Cash and U.S. Government securities as defined in section 2(a)(16) of the Investment Company Act of 1940, as amended; *provided, however,* that (a) the scope of any such permissible investments shall be further limited to include only those investments that a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) may be permitted to hold and (b) the Liquidation Trustee may expend the Liquidation Trust Assets (i) as reasonably necessary to meet contingent liabilities and maintain the value of the Liquidation Trust Assets during liquidation, (ii) to pay reasonable administrative expenses (including, but not limited to, any taxes imposed on the Liquidation Trust or reasonable fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Liquidation Trust (or to which the Liquidation Trust Assets are otherwise subject) in accordance with the Plan or the Liquidation Trust Agreement.

9.6.7 *Liquidation Trustee's Tax Power for Debtors.*

As described in Section 5.9 of the Plan, following the Effective Date, the Liquidation Trustee shall prepare and file (or cause to be prepared and filed), on behalf of the Debtors, all tax returns required to be filed or that the Liquidation Trustee otherwise deems appropriate. In the event that the Liquidation Trust shall fail or cease to qualify as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), the Liquidation Trustee shall take any and all necessary actions as it shall deem appropriate to have the Liquidation Trust classified as a partnership for federal tax purposes under Treasury Regulation section 301.7701-3, including, if necessary, creating or

converting the Liquidation Trust into a Delaware limited liability partnership or limited liability company that is so classified.

9.6.8 ***Insurance.***

The Liquidation Trustee will maintain customary insurance coverage for the protection of the Liquidation Trustee on and after the Effective Date.

9.6.9 ***Agreements and Other Actions.***

The Liquidation Trustee may enter into any agreement or execute any document required by or consistent with the Plan and perform all of the Debtors' and Liquidation Trust's obligations thereunder. The Liquidation Trustee may take all other actions not inconsistent with the provisions of the Plan and the Liquidation Trust Agreement that the Liquidation Trustee deems reasonably necessary or desirable with respect to administering the Plan.

9.7 Funding of the Liquidation Trust.

On the Effective Date, the Liquidation Trust Reserve shall be transferred to, and vest in, the Liquidation Trust for purposes of funding the Liquidation Trust. Thereafter, the terms of the Liquidation Trust Agreement shall govern the funding of the Liquidation Trust.

9.8 Exculpation; Indemnification.

The Liquidation Trustee, the Liquidation Trust, the professionals of the Liquidation Trust, and their representatives will be exculpated and indemnified pursuant to the terms of the Liquidation Trust Agreement. The indemnification described in the Liquidation Trust Agreement will exclude fraud, willful misconduct, and gross negligence. Any indemnification claim of the Liquidation Trustee or the other individuals entitled to indemnification under this subsection shall be satisfied solely from the Liquidation Trust Assets and shall be entitled to a priority distribution therefrom, ahead of any other claim to or interest in such assets. The Liquidation Trustee and its representatives shall be entitled to rely, in good faith, on the advice of their retained professionals.

9.9 Federal Income Tax Treatment of Liquidation Trust.

9.9.1 Pursuant to Revenue Procedure 94-45, for all U.S. federal income tax purposes, all parties (including, without limitation, the Debtors, the Liquidation Trustee and the Liquidation Trust Beneficiaries) shall treat the transfer of the Liquidation Trust Assets to the Liquidation Trust for the benefit of the Liquidation Trust Beneficiaries, whether their Claims are Allowed on or after the Effective Date as (i) a transfer of the Liquidation Trust Assets (subject to any obligations relating to those assets) directly to the Liquidation Trust Beneficiaries, in exchange for those Liquidation Trust Beneficiaries relinquishing their claims, followed by (ii) the transfer by the Liquidation Trust Beneficiaries to the Liquidation Trust of the Liquidation Trust Assets (other than the Liquidation Trust Assets allocable to any disputed ownership fund) in exchange for interests in Liquidation Trust. Accordingly, the Liquidation Trust Beneficiaries shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the Liquidation Trust Assets (other than such Liquidation Trust Assets as are allocable to any disputed

ownership fund). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9.9.2 Subject to contrary definitive guidance from the Internal Revenue Service or a court of competent jurisdiction (including the receipt by the Liquidation Trustee of a private letter ruling if the Liquidation Trustee so requests, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Liquidation Trustee), the Liquidation Trustee may (A) timely elect to treat any Disputed Claims reserve as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9 and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Liquidation Trustee, the Debtors and the Liquidation Trust Beneficiaries) shall report for U.S. federal, state and local income tax purposes consistently with the foregoing.

9.10 Tax Reporting.

9.10.1 The Liquidation Trustee shall file tax returns for the Liquidation Trust treating the Liquidation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this Section 9.10. The Liquidation Trustee also will annually send to each Liquidation Trust Beneficiary a separate statement setting forth the Liquidation Trust Beneficiary's share of items of income, gain, loss, deduction or credit (including the receipts and expenditures of the Liquidation Trust) as relevant for U.S. federal income tax purposes and will instruct all such holders to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such holder's underlying beneficial holders with instructions to utilize such information in preparing their U.S. federal income tax returns. The Liquidation Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Liquidation Trust that is required by any governmental unit.

9.10.2 The valuation of the Liquidation Trust Assets prepared pursuant to Section 9.4 of the Plan shall be used consistently by all parties (including the Liquidation Trustee and the Liquidation Trust Beneficiaries) for all federal income tax purposes.

9.10.4 The Liquidation Trustee shall be responsible for payment, out of the Liquidation Trust Assets, of any taxes imposed on the Liquidation Trust or the Liquidation Trust Assets, including any disputed ownership fund. In the event, and to the extent, any Cash retained on account of Disputed Claims in a disputed ownership fund is insufficient to pay the portion of any such Taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such Taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims or (ii) to the extent that such Disputed Claims have subsequently been resolved, deducted from any amounts otherwise distributable by the Liquidation Trustee as a result of the resolution of such Disputed Claims.

9.10.5 The Liquidation Trustee may request an expedited determination of Taxes of the Liquidation Trust, including the Disputed Claims Reserve, or the Plan Debtors under section 505(b) of the Bankruptcy Code, for all tax returns filed for, or on behalf of, the Liquidation Trust or the Plan Debtors for all taxable periods through the dissolution of the Liquidation Trust.

9.11 Tax Withholdings by Liquidation Trustee.

The Liquidation Trustee may withhold and pay to the appropriate taxing authority all amounts required to be withheld pursuant to the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or distribution to the Liquidation Trust Beneficiaries. All such amounts withheld and paid to the appropriate taxing authority shall be treated as amounts distributed to such Liquidation Trust Beneficiaries for all purposes of the Liquidation Trust Agreement. The Liquidation Trustee shall be authorized to collect such tax information from the Liquidation Trust Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as it, in its sole discretion, deems necessary to effectuate the Plan, the Confirmation Order and the Liquidation Trust Agreement. In order to receive distributions under the Plan, all Liquidation Trust Beneficiaries will need to identify themselves to the Liquidation Trustee and provide tax information and the specifics of their holdings, to the extent the Liquidation Trustee deems appropriate. This identification requirement may, in certain cases, extend to holders who hold their securities in street name. The Liquidation Trustee may refuse to make a distribution to any Liquidation Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; *provided*, *however*, that, upon the delivery of such information by a Liquidation Trust Beneficiary, the Liquidation Trustee shall make such distribution to which the Liquidation Trust Beneficiary is entitled, without interest; and, *provided*, *further*, that, if the Liquidation Trustee fails to withhold in respect of amounts received or distributable with respect to any such holder and the Liquidation Trustee is later held liable for the amount of such withholding, such holder shall reimburse the Liquidation Trustee for such liability.

9.12 Dissolution.

The Liquidation Trust shall be dissolved at such time as (i) all of the Liquidation Trust Assets have been distributed pursuant to the Plan and the Liquidation Trust Agreement, (ii) the Liquidation Trustee determines that the administration of any remaining Liquidation Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit, or (iii) all distributions required to be made by the Liquidation Trustee under the Plan and the Liquidation Trust Agreement have been made; *provided*, *however*, that in no event shall the Liquidation Trust be dissolved later than five years from the Effective Date unless the Bankruptcy Court determines that a fixed period extension (not to exceed two years, including any prior extensions) is necessary to facilitate or complete the recovery and liquidation of the Liquidation Trust Assets. If at any time the Liquidation Trustee determines, in reliance upon such professionals as the Liquidation Trustee may retain, that the expense of administering the Liquidation Trust so as to make a final distribution to the Liquidation Trust Beneficiaries is likely to exceed the value of the remaining Liquidation Trust Assets, the Liquidation Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve the Liquidation Trust, (ii) donate any balance to a charitable organization (A) described in section 501(c)(3) of the Tax Code, (B) exempt from U.S. federal income tax under section 501(a) of the Tax Code, (C) not a "private foundation" as defined in section 509(a) of the Tax Code, and (D) that is unrelated to the Debtors, the Liquidation Trust, and any insider of the Liquidation Trustee, and (iii) dissolve the Liquidation Trust.

ARTICLE 10.

RECLAMATION TRUST

10.1 Generally.

On the Effective Date, the Reclamation Trust shall be established and become effective for the benefit of Reclamation Trust Beneficiaries. The powers, authority, responsibilities, and duties of the Reclamation Trust and the Reclamation Trustee are set forth in and shall be governed by the Plan and the Reclamation Trust Agreement. In the event of any conflict between the terms of this Reclamation Trust Agreement and the Plan, the Plan shall control. The Reclamation Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances. The Debtors shall transfer, without recourse, to the Reclamation Trust all of their right, title, and interest in the Reclamation Trust Assets. Upon the transfer by the Debtors of the Reclamation Trust Assets to the Reclamation Trust, the Debtors will have no reversionary or further interest in or with respect to the Reclamation Trust Assets or the Reclamation Trust.

10.2 Purposes and Establishment of the Reclamation Trust.

10.2.1 On the Effective Date, the Reclamation Trust shall be established pursuant to the Reclamation Trust Agreement for the exclusive purpose of: (i) acting as a successor to the Debtors solely for the purpose of performing, managing, and funding satisfaction of the Reclamation Obligations; (ii) own the Reclamation Trust Assets, in a fiduciary capacity; (iii) carry out administrative functions related to reclamation and remediation of the Permitted Areas by the Reclamation Trust and other administrative functions as set forth herein; and (iv) ultimately sell or transfer all or part of the Reclamation Trust Assets, if possible. The Reclamation Trust is intended to qualify as a qualified settlement fund (for which no grantor trust election has been made) pursuant to the Treasury Regulations under section 468B of the Tax Code and related Treasury Regulations, with no objective to continue or engage in the conduct of a trade or any other business, except to the extent reasonably necessary to, and consistent with, the purpose of the Reclamation Trust. The Reclamation Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Reclamation Trust Agreement.

10.2.2 On the Effective Date, the Reclamation Trustee, on behalf of the Debtors, shall execute the Reclamation Trust Agreement and shall take all other steps necessary to establish the Reclamation Trust pursuant to the Reclamation Trust Agreement and consistent with the Plan.

10.2.3 The Reclamation Trust will not have nor be granted any claims against the Debtors or the Liquidation Trust. Any payments or distributions made by the Liquidation Trust in respect of any Allowed Claim asserted against the Debtors by the Impacted States or other governmental entities for the cost of completing reclamation of any of the Permitted Areas in excess of the bonded amounts shall be transferred by the Impacted States or other governmental entities to the Reclamation Trust.

10.3 Reclamation Trust Assets.

10.3.1 On the Effective Date, and in accordance with sections 1123 and 1141 of the Bankruptcy Code and pursuant to the terms of the Plan, all right, title and interest in all of the Reclamation Trust Assets, as well as the rights and powers of each Debtor in such Reclamation Trust Assets, shall automatically vest in the Reclamation Trust, for the benefit of the Reclamation Trust Beneficiaries. Upon the transfer of the Reclamation Trust Assets, the Debtors shall have no interest, and shall have no further liability or responsibility of any kind, in or with respect to the Reclamation Trust Assets or the Reclamation Trust. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Reclamation Trust Assets to the Reclamation Trust shall not affect the mutuality of obligations which otherwise may have existed prior to the effectuation of such transfer. Such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax, pursuant to section 1146(a) of the Bankruptcy Code. In connection with the transfer of such assets, any attorney client privilege, work product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Reclamation Trust shall vest in the Reclamation Trust and its representatives, and the Debtors and the Reclamation Trustee are directed to take all necessary actions to effectuate the transfer of such privileges. The Reclamation Trustee shall agree to accept and hold the Reclamation Trust Assets in the Reclamation Trust for the benefit of the Reclamation Trust Beneficiaries, subject to the terms of the Plan and the Reclamation Trust Agreement, and take all necessary steps to satisfy the Reclamation Obligations.

10.3.2 The Debtors, the Reclamation Trustee, the Reclamation Trust Beneficiaries, and any party under the control of such parties will execute any documents or other instruments and shall take all other steps as necessary to cause title to the Reclamation Trust Assets to be transferred to the Reclamation Trust.

10.4 Appointment of the Reclamation Trustee.

On the Effective Date and in compliance with the provisions of the Plan and the Reclamation Trust Agreement, the Debtors in consultation with the Sureties and Impacted States shall appoint a person or firm as Reclamation Trustee. The salient terms of the Reclamation Trustee's employment, including the Reclamation Trustee's duties and compensation, to the extent not set forth in the Plan Supplement, shall be set forth in the Reclamation Trust Agreement or the Confirmation Order.

10.5 Duties and Powers of the Reclamation Trustee.

10.5.1 ***Authority*****.**

The duties and powers of the Reclamation Trustee shall include all powers necessary to (a) implement the provisions of the Plan and Reclamation Trust Agreement with respect to the Reclamation Obligations, (b) transfer, liquidate and transact with respect to all Reclamation Trust Assets, and (c) fund the remediation activities necessary to fulfill the Reclamation Obligations, as necessary. The Reclamation Trustee will administer the Reclamation Trust in accordance with the Reclamation Trust Agreement. The Reclamation Trustee shall, in an expeditious but orderly

manner, liquidate or transfer the Reclamation Trust Assets, make timely reclamation and remediation efforts, and not unduly prolong the duration of the Reclamation Trust.

10.5.2 ***Retention of Professionals*.**

The Reclamation Trustee may enter into employment agreements and retain professionals to advise the Reclamation Trustee and provide services to the Reclamation Trust in connection with the matters contemplated by the Plan, the Confirmation Order, and the Reclamation Trust Agreement without further order of the Bankruptcy Court. Unless an alternative fee arrangement has been agreed to (either by order of the Bankruptcy Court or with the consent of the Reclamation Trustee), professionals retained by the Reclamation Trustee shall be compensated from the proceeds of the Reclamation Trust Assets.

10.5.3 ***Reasonable Fees and Expenses*.**

The Reclamation Trustee may incur and pay any reasonable and necessary expenses in connection with the performance of its duties under the Plan, including in connection with retaining professionals and/or entering into agreements pursuant to Sections 10.5.2 and 10.5.6 hereof. The Reclamation Trustee shall be paid from the proceeds of the Reclamation Trust Assets.

10.5.4 ***Investment Powers*.**

The right and power of the Reclamation Trustee to invest the Reclamation Trust Assets, the proceeds thereof, or any income earned by the Reclamation Trust shall be limited to the right and power to invest in such assets only in Cash and U.S. Government securities as defined in section 2(a)(16) of the Investment Company Act of 1940, as amended; *provided, however,* that (a) the scope of any such permissible investments shall be further limited to include only those investments that a qualified settlement fund (for which no grantor trust election has been made) pursuant to the Treasury Regulations under section 468B of the Tax Code and related Treasury Regulations may be permitted to hold, and (b) the Reclamation Trustee may expend the Reclamation Trust Assets (i) as reasonably necessary to meet contingent liabilities and maintain the value of the Reclamation Trust Assets during liquidation, (ii) to pay reasonable administrative expenses (including, but not limited to, any taxes imposed on the Reclamation Trust or reasonable fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Reclamation Trust (or to which the Reclamation Trust Assets are otherwise subject) in accordance with the Plan or the Reclamation Trust Agreement.

10.5.5 ***Insurance*.**

The Reclamation Trustee will maintain customary insurance coverage for the protection of the Reclamation Trustee on and after the Effective Date.

10.5.6 ***Agreements and Other Actions*.**

The Reclamation Trustee may enter into any agreement or execute any document required by or consistent with the Plan and perform all of the Debtors' and Reclamation Trust's obligations thereunder. The Reclamation Trustee may take all other actions not inconsistent with the

provisions of the Plan and the Reclamation Trust Agreement that the Reclamation Trustee deems reasonably necessary or desirable with respect to administering the Plan.

10.6 Funding of the Reclamation Trust.

On the Effective Date, the Reclamation Trust Reserve shall be transferred to, and vest in, the Reclamation Trust for purposes of funding the Reclamation Trust. Thereafter, the terms of the Reclamation Trust Agreement shall govern the funding of the Reclamation Trust.

10.7 Exculpation; Indemnification.

The Reclamation Trustee, the Reclamation Trust, the professionals of the Reclamation Trust, and their representatives will be exculpated and indemnified pursuant to the terms of the Reclamation Trust Agreement. The indemnification described in the Reclamation Trust Agreement will exclude willful misconduct and gross negligence. Any indemnification claim of the Reclamation Trustee or the other individuals entitled to indemnification under this subsection shall be satisfied solely from the Reclamation Trust Assets and shall be entitled to a priority, ahead of any other claim to or interest in such assets. The Reclamation Trustee and its representatives shall be entitled to rely, in good faith, on the advice of their retained professionals.

10.8 Federal Income Tax Treatment of Reclamation Trust.

The Reclamation Trust is intended to be treated as a qualified settlement fund (for which no grantor trust election has been made) pursuant to Treasury Regulations under section 468B of the Tax Code and related Treasury Regulations for federal income tax purposes, and to the extent provided by law, the Reclamation Trust Agreement shall be governed and construed in all respects consistent with such intent. In no event shall the Reclamation Trustee take the position that any portion of the Reclamation Trust or any portion of the Reclamation Trust Assets is a grantor trust owned by any or all of the Debtors.

10.9 Tax Reporting.

The Reclamation Trustee shall be the "administrator," within the meaning of Treasury Regulation Section 1.468B-2(k)(3), of the Reclamation Trust. Subject to definitive guidance from the Internal Revenue Service or a judicial decision to the contrary, the Reclamation Trustee shall file tax returns and pay applicable taxes with respect to the Reclamation Trust in a manner consistent with the provisions of Treasury Regulation Section 1.468B-2. All such taxes shall be paid from the Reclamation Trust Assets.

10.10 Tax Withholdings by Reclamation Trustee.

The Reclamation Trustee may withhold and pay to the appropriate taxing authority all amounts required to be withheld pursuant to the Tax Code or any provision of any foreign, state or local tax law with respect to any distribution from the Reclamation Trust. All such amounts withheld and paid to the appropriate taxing authority shall be treated as amounts distributed for purposes of the Reclamation Trust Agreement.

10.11 Dissolution.

The Reclamation Trust shall be dissolved at such time as (i) all of the Reclamation Trust Assets have been either liquidated, sold or transferred, and/or (ii) the Reclamation Obligations have been satisfied pursuant to the Plan and the Reclamation Trust Agreement; *provided, however*, that in no event shall the Reclamation Trust be dissolved later than five years from the Effective Date unless the Bankruptcy Court determines that a fixed period extension (not to exceed two years, including any prior extensions) is necessary to facilitate or complete the purposes of the Reclamation Trust. To the extent any Cash or other funds remain in the Reclamation Trust at dissolution, such funds shall be distributed to the Sureties on a *pro rata* basis consistent with each Surety's initial contribution to the Reclamation Trust Reserve.

ARTICLE 11.

CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN

11.1 Conditions Precedent to the Effective Date.

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived by the Debtors pursuant to the provisions of Section 11.2 of the Plan:

11.1.1 The Confirmation Order shall have been entered, become a Final Order, and remain in full force and effect;

11.1.2 The Plan Documents, including the Plan Supplement, shall have been executed and delivered, and any conditions (other than the occurrence of the Effective Date or certification by a Debtor that the Effective Date has occurred) contained therein shall have been satisfied or waived pursuant to the terms of such documents or agreements;

11.1.3 All material governmental, regulatory, and third-party approvals, authorizations, certifications, rulings, no-action letters, opinions, waivers and consents required in connection with the Plan, if any, shall have been obtained and remain in full force and effect, and there shall exist no Claim, action, suit, investigation, litigation or proceeding, pending or threatened in any court or before any arbitrator or governmental instrumentality, which would prohibit the consummation of the Plan;

11.1.4 The Liquidation Trust shall be established and funded and the Liquidation Trustee shall have been appointed in accordance with the provisions of the Plan and the terms of the Liquidation Trust Agreement; and

11.1.5 The Reclamation Trust shall be established and the Reclamation Trustee shall have been appointed in accordance with the provisions of the Plan and the terms of the Reclamation Trust Agreement.

11.2 Satisfaction and Waiver of Conditions Precedent.

Except as otherwise provided in the Plan, any actions taken on the Effective Date shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. Any of the conditions set forth in Section 11.1 hereof may be waived in whole or part by the Debtors and the Consultation Parties without notice, leave, or order of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate the Plan.

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

Unless the Court rules otherwise, if the Effective Date does not occur on or before 60 days after entry of the Confirmation Order, (i) the Confirmation Order shall be vacated, (ii) no Plan Distributions shall be made, (iii) the Debtors and all holders of Claims and Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred, (iv) the Debtors' obligations with respect to Claims and Interests shall remain unchanged, and (v) the Plan shall be null and void in all respects. If the Confirmation Order is vacated pursuant to this Section 11.3, nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims against or Interests in the Debtors; (b) prejudice in any manner the rights of the holder of any Claim against or Interest in the Debtors; or (c) constitute an admission, acknowledgment, offer or undertaking by any Debtor or any other Person with respect to any matter set forth in the Plan.

ARTICLE 12.

EFFECT OF CONFIRMATION

12.1 Binding Effect.

Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code and subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against, or Interest in, the Debtors and inure to the benefit of and be binding on such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

12.2 Term of Pre-Confirmation Injunctions or Stays.

Unless otherwise provided in the Plan, all injunctions or stays arising prior to the Confirmation Date in accordance with sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

12.3 Debtor Release.

12.3.1 Upon the Effective Date of the Plan, for good and valuable consideration, the adequacy of which is hereby confirmed, pursuant to section 1123(b) of the Bankruptcy Code and to the fullest extent permitted by applicable law, the Debtors, their Estates and any Person (including the Liquidation Trustee and the Reclamation Trustee) seeking to exercise the rights of the Debtors or the Debtors' Estates, including, without

limitation, the Committee, any successor to the Debtors or the Debtors' Estates or any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code (an "Estate Representative") shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and waived the Released Parties from any and all Claims, Interests, obligations, rights, suits, judgments, damages, demands, debts, Causes of Action, remedies, and liabilities whatsoever, including any derivative Claims asserted on behalf of the Debtors, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or hereinafter arising, in law, equity, or otherwise, that the Debtors, their Estates or any Person (including the Liquidation Trustee and Reclamation Trustee) seeking to exercise the rights of the Debtors or the Debtors' Estates, including without limitation, the Committee and an Estate Representative, would have been entitled to assert (whether individually or collectively), based on or in any way relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Documents, and related agreements, settlements, instruments, or other documents, arising from or related to any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes fraud or willful misconduct. Notwithstanding anything to the contrary in the foregoing, the Debtor Release does not release any post-Effective Date obligations of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

12.3.2 Upon the Effective Date of the Plan, in connection with the Distributions to the holders of Allowed General Unsecured Claims in accordance with section 3.2 of this Plan, the Debtors, their Estates, and any Person (including the Liquidation Trustee, the Reclamation Trustee, and any Estate Representative) shall grant each holder of an Allowed General Unsecured Claim an Avoidance Action Release.

12.3.3 Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases described in this Article XII, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release and Avoidance Action Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties or the holders of Allowed General Unsecured Claims, as applicable; (2) a good-faith settlement and compromise of such claims; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors or their Estates asserting any Claim or Cause of Action released pursuant to the Debtor Release or Avoidance Action Release.

12.4 Third-Party Release.

12.4.1 As of the Effective Date, to the fullest extent permitted by applicable law, the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and waived the Liquidation Trust, the Reclamation Trust, and all Released Parties from any and all Claims, Interests, obligations, rights, suits, judgments, damages, demands, debts, Causes of Action, remedies, and liabilities whatsoever, including any derivative Claims asserted on behalf of the Debtors, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or hereinafter arising, in law, equity, or otherwise, that such Person would have been entitled to assert (whether individually or collectively), based on or in any way relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Documents, and related agreements, settlements, instruments, or other documents, arising from or related to any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes fraud or willful misconduct. Notwithstanding anything to the contrary in the foregoing, the Third-Party Release does not release any post-Effective Date obligations of any party under the Plan, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, or any indemnification, exculpation, insurance or advancement of expenses obligations, reimbursement of expenses obligations, obligations arising from the ownership of equity or debt securities or other Interests in the Debtors, or any wages, overtime, bonus or employee benefit (including health, welfare, or retirement benefits) obligations owed to any Releasing Party.

12.4.2 Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of the claims released by the Third-Party Release; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Releasing Parties asserting any claim or cause of action released pursuant to the Third-Party Release.

12.5 Exculpation and Limitation of Liability.

Except as otherwise specifically provided in the Plan and to the extent not prohibited by applicable law, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Exculpated Claim, obligation, Cause of Action, or liability for any Exculpated Claim; *provided, however,* that the foregoing exculpation shall have no effect on the liability of any Person that results from any such act or omission that is

determined in a Final Order to have constituted gross negligence or willful misconduct; *provided, further*, that in all respects such Persons shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties (and each of their respective affiliates, agents, directors, officers, employees, advisors, and attorneys) have complied with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distribution of the Plan and the Plan Distributions and, therefore, are not and shall not be liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such Plan Distributions.

12.6 Injunction Related to Releases and Exculpation.

Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan, or Confirmation Order, all entities who have held, hold, or may hold Claims against or Interests in the Debtors are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, their Estates, the Liquidation Trust, the Disbursing Agent, the Reclamation Trust, the Released Parties, or the Exculpated Parties on account of any such Claims or Interests including, but not limited to: (1) commencing or continuing in any manner any action or other proceeding of any kind; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order; (3) creating, perfecting, or enforcing any encumbrance of any kind; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from the Debtors' Estates, the Liquidation Trust, or the Reclamation Trust, notwithstanding an indication in a proof of Claim or Interest or otherwise that such holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise; (5) commencing or continuing in any manner any action or other proceeding of any kind that does not comply with or is inconsistent with the Plan, including any right of action against an Exculpated Party for any Exculpated Claim, obligation, Cause of Action, or liability for any Exculpated Claim; and (6) taking any actions to interfere with the implementation or consummation of the Plan; provided, however, that nothing herein shall preclude any entity from exercising rights pursuant to and consistent with the terms of the Plan or the Confirmation Order.

ARTICLE 13.

RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain the maximum legally permissible jurisdiction over all matters arising out of, and related to the Chapter 11 Cases or the Plan pursuant to, and for purposes of, sections 105(a) and 1142 of the Bankruptcy Code, including, without limitation, jurisdiction to:

13.1.1 allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim, the resolution of any and all

objections to the allowance or priority of any Claims and the resolution of any and all issues related to the release of Liens upon payment of a secured Claim;

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

13.1.3 determine any and all disputes among creditors with respect to the priority, amount or secured or unsecured status of their Claims;

13.1.4 resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is a party or with respect to which a Debtor may be liable in any manner and to adjudicate and, if necessary, liquidate any Claims arising therefrom; (b) any potential contractual obligation under any assumed Executory Contract or Unexpired Lease; and (c) any dispute regarding whether a contract or lease is or was an Executory Contract or Unexpired Lease, as applicable;

13.1.5 ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

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

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

13.1.8 resolve any cases, Claims, controversies, suits, disputes, or causes of action that may arise in connection with the occurrence of the Effective Date, confirmation, interpretation, implementation or enforcement of the Plan or the extent of any entity's obligations incurred in connection with or released under the Plan;

13.1.9 hear and determine all Causes of Action that are pending as of the date hereof or that may be commenced in the future, including, but not limited to, the Liquidation Trust Causes of Action, and the litigation discussed in sections 5.19 and 5.21 of the Disclosure Statement;

13.1.10 issue and enforce injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with the Effective Date or the consummation, implementation or enforcement of the Plan, except as otherwise provided in the Plan;

13.1.11 resolve any ambiguities between the Liquidation Trust Agreement and the Plan;

13.1.12 resolve any ambiguities between the Reclamation Trust Agreement and the Plan;

13.1.13 enforce the terms of the Liquidation Trust Agreement and to decide any claims or disputes that may arise or result from, or be connected with, the Liquidation Trust Agreement, any breach or default under the Liquidation Trust Agreement or the transactions contemplated by the Liquidation Trust Agreement;

13.1.14 enforce the terms of the Reclamation Trust Agreement and to decide any claims or disputes that may arise or result from, or be connected with, the Reclamation Trust Agreement, any breach or default under the Reclamation Trust Agreement or the transactions contemplated by the Reclamation Trust Agreement;

13.1.15 resolve any matters related to the Liquidation Trust;

13.1.16 resolve any matters related to the Reclamation Trust;

13.1.17 resolve any Disputed Claims;

13.1.18 resolve any cases, controversies, suits, or disputes with respect to the releases, exculpations, and other provisions contained in article 12 of the Plan and enter such orders as may be necessary or appropriate to implement or enforce all such releases, exculpations, and other provisions;

13.1.19 recover all assets of the Debtors and property of the Debtors' Estates wherever located;

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

13.1.21 consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any Bankruptcy Court order, including, without limitation, the Confirmation Order;

13.1.22 enter and implement such orders or take such other actions as may be necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

13.1.23 resolve any other matters that may arise in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement;

13.1.24 adjudicate any and all disputes arising from or relating to Plan Distributions;

13.1.25 determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code, including requests by Professional Persons for payment of accrued professional compensation;

13.1.26 enforce all orders previously entered by the Bankruptcy Court;

13.1.27 hear any other matter not inconsistent with the Bankruptcy Code or related statutory provisions setting forth the jurisdiction of the Bankruptcy Court; and

13.1.28 enter a final decree closing the Chapter 11 Cases.

ARTICLE 14.

MISCELLANEOUS PROVISIONS

14.1 Dissolution of Committee.

The Committee shall be automatically dissolved on the Effective Date and, on the Effective Date, each member of the Committee (including each officer, director, employee, agent, consultant, or representative thereof) and each Professional Person retained by the Committee shall be released and discharged from all further authority, duties, responsibilities, and obligations relating to the Debtors and the Chapter 11 Cases; *provided, however*, that the foregoing shall not apply to any matters concerning any Fee Claims held or asserted by any Professional Persons retained by the Committee.

14.2 Modification of Plan.

The Debtors reserve the right in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend, modify, or supplement the Plan before the entry of the Confirmation Order. In addition, after the Confirmation Date, so long as such action does not materially and adversely affect the treatment of holders of Allowed Claims pursuant to the Plan, the Debtors, the Liquidation Trustee, or the Reclamation Trustee, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan in accordance with section 1127(b) of the Bankruptcy Code to remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. Subject to the foregoing, a holder of a Claim that had accepted the Plan shall be deemed to have accepted the Plan as amended, modified, or supplemented.

14.3 Revocation or Withdrawal of Plan.

The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan in accordance with the preceding sentence prior to the Confirmation Date as to any or all of the Debtors, or if confirmation or the Effective Date does not occur with respect to one or more of the Debtors, then, with respect to such Debtors: (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Interest or Class of Claims or Interests), assumption or rejection of executory contracts or leases affected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, such Debtor(s) or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by the Debtors or any other Person.

14.4 Allocation of Plan Distributions Between Principal and Interest.

To the extent that any Allowed Claim entitled to a distribution under the Plan consists of indebtedness and other amounts (such as accrued but unpaid interest thereon), such distribution shall be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to such other amounts.

14.5 Severability.

If, prior to the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall, at the request of the Debtors, have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such order by the Bankruptcy Court, alteration, or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

14.6 Governing Law.

Except to the extent that the Bankruptcy Code or other U.S. federal law is applicable, or to the extent a Plan Document or exhibit or schedule to the Plan provides otherwise, the rights, duties, and obligations arising under the Plan and the Plan Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof to the extent such principles would result in the application of the laws of any other jurisdiction.

14.7 Inconsistency.

In the event of any inconsistency among the Plan, the Disclosure Statement, the Plan Documents, any exhibit to the Plan or any other instrument or document created or executed pursuant to the Plan, the provisions of the Plan shall govern.

14.8 Time.

In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth in the Plan or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

14.9 Exhibits.

All exhibits to the Plan are incorporated and are a part of the Plan as if set forth in full in the Plan.

14.10 Notices.

To be effective, all notices, requests, and demands to or upon the Debtors shall be in writing (including by facsimile transmission) and, unless otherwise provided in the Plan, shall be deemed to have been duly given or made only when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

BLACKJEWEL LLC
999 17th Street, Suite 700
Denver, Colorado, 80202
Attn: David J. Beckman

-and-

Counsel to the Debtors

SQUIRE PATTON BOGGS
Stephen Lerner (admitted *pro hac vice*)
201 E. Fourth Street, Suite 1900
Cincinnati, Ohio 45202
Telephone: 513.361.1200
Facsimile: 513.361.1201

14.11 Filing of Additional Documents.

On or before substantial consummation of the Plan, the Debtors shall file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

Dated: October 21, 2020

Respectfully submitted,

Blackjewel L.L.C.
on behalf of itself and its affiliated Debtors

By: */s/ David J. Beckman*
David J. Beckman

SUPPLE LAW OFFICE, PLLC
Joe M. Supple
801 Viand Street
Point Pleasant, West Virginia 25550
Telephone: 304.675.6249
Facsimile: 304.675.4372

– and –

SQUIRE PATTON BOGGS
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Nava Hazan (admitted *pro hac vice*)
Travis A. McRoberts (admitted *pro hac vice*)
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Cincinnati, Ohio 45202
Telephone: 513.361.1200
Facsimile: 513.361.1201

EXHIBIT 2

Liquidation Analysis

(Attached)

Blackjewel LLC
Liquidation Analysis
Prepared as of 9/25/20

SUBJECT TO MATERIAL CHANGE

($ in 000's)	Claim Amount		Conversion to Chapter 7				Chapter 11 Plan of Liquidation			
	High	Low	Low		High		Low		High	
Sources										
Cash On Hand	N/A	N/A	100		2,155		100		2,155	
Litigation Recoveries	N/A	N/A	1,000		80,000		4,000		100,000	
Preference Recovery	N/A	N/A	-		547		-		547	
Total Litigation Recovery			1,000		80,547		4,000		100,547	
Royalties	N/A	N/A	-		17,497		-		17,497	
Miscellaneous Assets	N/A	N/A	80		3,800		505		3,800	
Total Sources			**1,180**		**104,000**		**4,605**		**124,000**	
Uses										
Liquidation / Wind Down Expenses										
Ch. 7 Admin / Wind-Down Costs	N/A	N/A	500		6,000		2,000		5,000	
Trustee Fees	N/A	N/A	35		3,120		-		-	
Total Liquidation Expenses			535		9,120		2,000		5,000	
Remaining Proceeds			**645**		**94,880**		**2,605**		**119,000**	
Secured Claims										
Tax Related	14,650	10,695	456	3%	10,695	100%	1,844	13%	10,695	100%
Other	6,040	-	188	3%	-	0%	761	13%	-	0%
Total - Secured Claims	**20,690**	**10,695**	**645**	3%	**10,695**	100%	**2,605**	13%	**10,695**	100%
Remaining Proceeds			**-**		**84,184**		**-**		**108,304**	
Ch. 11 Administrative										
Estimated Payables	2,000	58	-	0%	58	100%	-	0%	58	100%
Professional Fees	13,808	13,808	-	0%	13,808	100%	-	0%	13,808	100%
Subtotal - Non 503 (b)(9) Admin. Claims	15,808	13,866	-	0%	13,866	100%	-	0%	13,866	100%
503(b)(9)	7,701	7,066	-	0%	7,066	100%	-	0%	7,066	100%
Total - Administrative Claims	**23,509**	**20,932**	**-**	0%	**20,932**	100%	**-**	0%	**20,932**	100%
Remaining Proceeds			**-**		**63,252**		**-**		**87,372**	
Priority Unsecured										
Employee	17,342	17,342	-	0%	17,342	100%	-	0%	17,342	100%
Tax Related	50,623	25,000	-	0%	25,000	100%	-	0%	25,000	100%
Other	8,449	-	-	0%	-	0%	-	0%	-	0%
Total - Priority Unsecured	**76,414**	**42,342**	**-**	0%	**42,342**	100%	**-**	0%	**42,342**	100%
Remaining Proceeds			**-**		**20,910**		**-**		**45,030**	
General Unsecured	364,329	292,150	-	0%	20,910	7%	-	0%	45,030	15%
Total Uses			**1,180**		**104,000**		**4,605**		**124,000**	

Disclaimer/Notes:

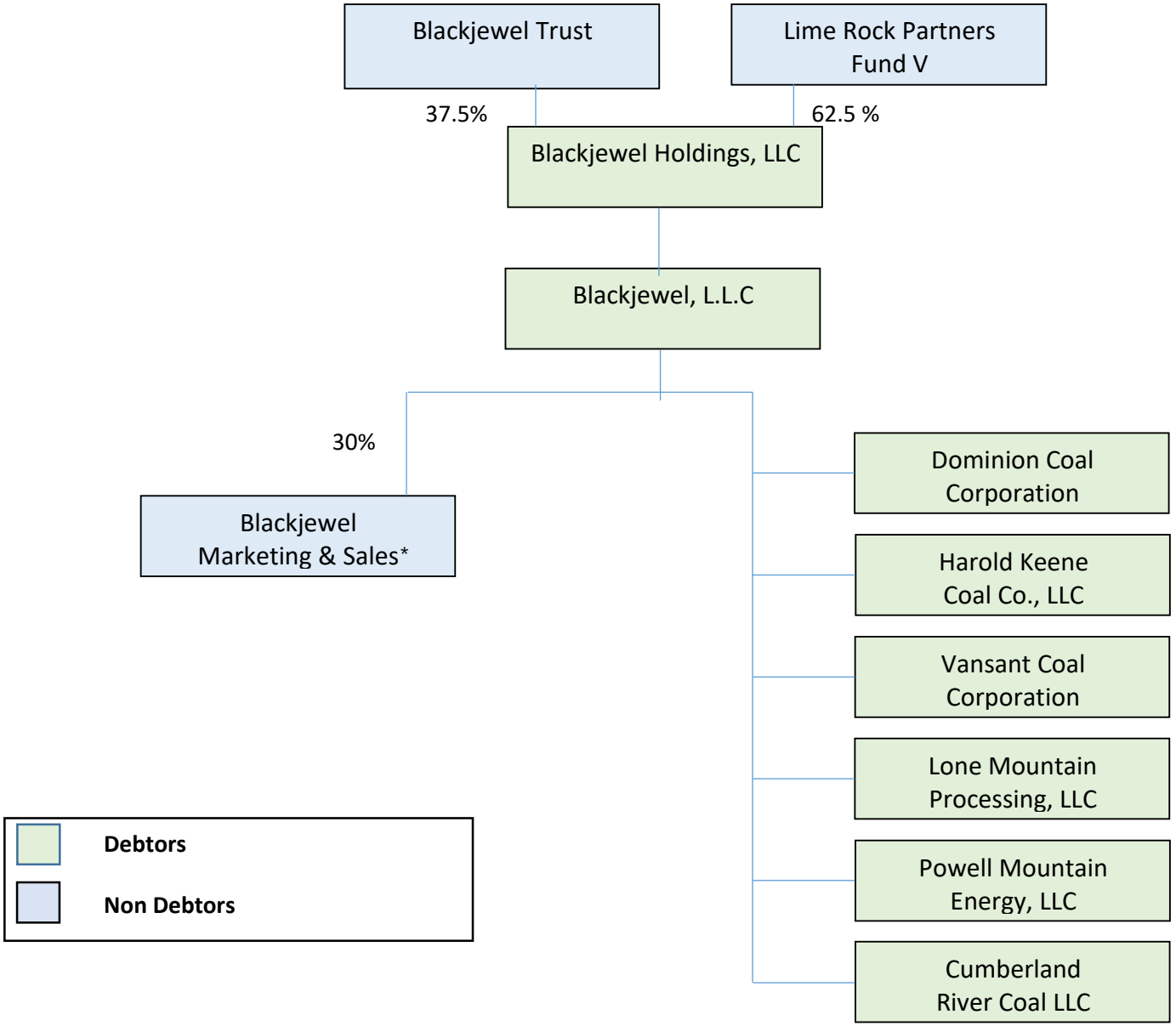
1. The estimated recovery ranges included herein for the Litigation Proceedings are included herein for illustrative purposes only. The estimated recovery ranges for the Litigation Proceedings, while presented with numerical specificity, are necessarily based on a variety of estimates and assumptions which, though considered reasonable by the Debtors and their professionals, may not be realized and are inherently subject to significant business, economic, industry, regulatory, market, and financial uncertainties and contingencies, many of which are beyond the Debtors' control and will be beyond the Liquidation Trustee's control. The Debtors caution that no representations can be made or are made as to the accuracy of the estimated recovery ranges or the Liquidation Trustee's ability to achieve the projected results. Some assumptions inevitably will be inaccurate. Moreover, events and circumstances occurring subsequent to the date on which the Debtors prepared these the estimated recovery ranges for the Litigation Proceedings 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. As an example, the estimates could be materially affected by information ascertained in discovery during the Litigation Proceedings.
2. The liquidation analysis is prepared on a consolidated basis, not on a debtor by debtor basis.
3. Claims have been reviewed on a preliminary basis. Duplicate claims have been removed for purposes of this analysis. Additional review is necessary to fully adjudicate claims.
4. Assumes claims in the same class receive an equal recovery across all Debtors. Priority per the code may require different treatment, and recovery may be different for different Debtors.
5. All amounts are presented at their nominal values. There are no discounted rates.
6. All estimates are based on the current understanding of the Debtors and their business operations.

EXHIBIT 3

Corporate Organization Chart

(Attached)

BLACKJEWEL ORGANIZATIONAL CHART



*The Debtors transferred their interest in Blackjewel Marketing & Sales to Javelin during these chapter 11 cases as further described in section 5.14 herein.

REVELATION ORGANIZATIONAL CHART