

**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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INTRODUCTION²

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

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