

COURT FILE NUMBER 1601-03113

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF QUICKSILVER RESOURCES  
CANADA INC., 0942065 B.C. LTD., and 0942069 B.C. LTD.

DOCUMENT **NINTH REPORT OF FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR OF QUICKSILVER  
RESOURCES CANADA INC., 0942065 B.C. LTD., and  
0942069 B.C. LTD.**

**December 14, 2016**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**MONITOR**  
FTI Consulting Canada Inc.  
Suite 720, 440 – 2nd Avenue SW  
Calgary, AB T2P 5E9  
Deryck Helkaa/Dustin Olver  
Telephone: (403) 454-6031  
Fax: (403) 232-6116  
E-mail: deryck.helkaa@fticonsulting.com  
dustin.olver@fticonsulting.com

**COUNSEL**  
McCarthy Tétrault LLP  
Suite 4000, 421 - 7th Avenue SW  
Calgary, AB T2P 4K9  
Sean F. Collins/Walker Macleod  
Telephone: (403) 260-3531/ (403)260-3710  
Fax: (403) 260-3501  
Email: scollins@mccarthy.ca  
wmacleod@mccarthy.ca

## INTRODUCTION

1. On March 8, 2016 Quicksilver Resources Canada Inc. (“QRCI”), 0942065 B.C. Ltd. (“LNG Co”), and 0942069 B.C. Ltd. (“LNG Subco”) (collectively the “Applicants”) sought and obtained protection under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA") pursuant to an order granted by this Honourable Court (the "Initial Order").
2. The Initial Order granted, *inter alia*, a stay of proceedings against the Applicants until April 7, 2016, (the "Initial Stay Period") and appointed FTI Consulting Canada Inc. (“FTI”) as Monitor (the “Monitor”). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the CCAA proceedings (the “CCAA Proceedings”).
3. On March 29, 2016, this Honourable Court granted a sale approval and vesting order which, *inter alia*, approved the transaction contemplated by the asset purchase agreement for the Applicants’ Horseshoe Canyon Assets.
4. On April 5, 2016, this Honourable Court granted an order which, *inter alia*, extended the stay of proceedings provided in the Initial Order until and including June 2, 2016 and authorized the Applicants to distribute the net proceeds from the sale of the Horseshoe Canyon Assets to the JP Morgan, the senior secured creditor.
5. On April 22, 2016, this Honourable Court granted the following Orders:
  - (a) a sale approval and vesting order which, *inter alia*, approved the transaction contemplated by the asset purchase agreement for the Applicants' Horn River Assets;

- (b) a sale approval and vesting order which, *inter alia*, approved the transaction contemplated by the asset purchase agreement for the LNG Facility; and
  - (c) an order, which *inter alia*, approved the distribution of sale proceeds to the Secured Creditor.
- 6. The Horn River Assets, LNG Facility and Horseshoe Canyon Assets comprise the majority of the assets of the Applicant (other than miscellaneous receivables and other recoveries). All the proceeds have been received by the Applicants and certain of the proceeds have been distributed to the Secured Creditor to repay the Secured Creditor in full. The remaining net proceeds are being held pending the implementation of a plan of compromise and arrangement, as discussed below in further detail.
- 7. On May 26, 2016 this Honourable Court extended the Stay Period until August 5, 2016 and authorized QRCI to commence a claims process as further set out in the Claims Procedure Order.
- 8. On June 28, 2016 this Honourable Court granted two orders which, among other things;
  - (a) authorized QRCI, by way of shareholder resolution, to assign MMI into bankruptcy;
  - (b) extended the Claims Bar Date to August 5, 2016 for the Fortune Creek Gathering and Processing Partnership (“**Partnership**”) to submit a claim against QRCI if required;

- (c) authorized QRCI to pay certain amounts to the OGC and grant a first ranking priority charge in favor of QRCI to secure the amount of this payment over the assets of the Partnership; and
  - (d) approved of the appointment of Representative Counsel for all employees of QRCI who have been terminated in these proceedings and not rehired by CPC Resources (“Represented Employees”), approved the funding of the Representative Counsel by QRCI and extended the Claims Bar Date to August 5, 2016 for Representative Counsel to submit a claim on behalf of the Represented Employees.
9. On August 15, 2016 this Honourable Court granted an order extending the stay of proceedings until September 30, 2016.
10. On September 26, 2016 this Honourable Court granted an order extending the stay of proceedings until November 30, 2016 (“**Fourth Stay Extension**”).
11. On November 17, 2016 this Honourable Court granted various orders including;
- (a) An Order approving the Settlement Agreement between QRCI and the Represented Employees and amending the June 28, 2016 Representation Order, by increasing the maximum amount payable to Representative Counsel in respect of its fees from \$50,000 to \$75,000;
  - (b) An Order approving the Applicants’ request for a Meeting Order authorizing the Applicants to file their Plan and conduct a meeting (“**Creditors’ Meeting**”) of the Affected Creditors to consider and vote on the Plan; and
  - (c) An Order extending the stay of proceedings until and including February 28, 2016 (“**Fifth Stay Extension**”).

## PURPOSE

12. The purpose of this report (the “**Ninth Report**”) is to provide this Honourable Court with an update with respect to the Creditors’ Meeting held on December 13, 2016, in accordance with the Meeting Order.
13. Further background and information regarding the Applicants and these CCAA proceedings can be found on the Monitor’s website at <http://cfcanada.fticonsulting.com/qrci/>.

## TERMS OF REFERENCE

14. In preparing this report, the Monitor has relied upon unaudited financial information of the Applicants’ books and records, certain financial information prepared by the Applicants and discussions with the Applicants’ management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on management’s assumptions regarding future events; actual results may vary from forecast and such variations may be material.
15. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

16. This report should be read in conjunction with the affidavit of Mr. Bob McGregor sworn on November 7, 2016 (the “**McGregor November 7<sup>th</sup> Affidavit**”), the confidential affidavit of Mr. Bob McGregor sworn on November 7, 2016 (“**Confidential Affidavit**”) and the Plan Applicants’ application materials filed concurrently with the McGregor November 7<sup>th</sup> Affidavit and the Applicants application materials filed in respect of their Plan sanction hearing scheduled for December 15, 2016.
17. Capitalized terms not otherwise defined herein have the meaning given to them in the previous reports of the Monitor, the Plan or the Meeting Order.

#### **PLAN OF ARRANGEMENT**

18. The Applicants filed their Plan by means of a notice of motion pertaining to an application heard by this Court on November 17, 2016. On November 17, 2016 this Honourable Court granted the Meeting Order authorizing the Applicants to convene a Creditors’ Meeting on December 13, 2016 to consider and vote on the Plan.

#### *Notice to Creditors*

19. The proposed Meeting Order outlines how Affected Creditors will be given notice of the Meeting. Notice to Affected Creditors will be provided by the Monitor within one business day of the granting of the Meeting Order. The notice will be provided by way of courier, personal delivery or e-mail to Affected Creditors and will be posted on the Monitor’s website.
20. On November 19, 2016, in accordance with the Meeting Order, the Monitor completed the following:

- (a) Posted an electronic copy of the Notice to Affected Creditors, the Plan and the Affected Creditors' Proxy (in the forms provided by the Applicants as at the date of the Meeting Order) on its website.
- (b) delivered the Affected Creditor Meeting Materials by courier, personal delivery or email to each Affected Creditor with a Voting Claim and/or a Disputed Claim at the address set out in the Affected Creditor's Proof of Claim. The Affected Creditor Meeting Materials included:
  - i. A plan circular (“**Plan Circular**”) drafted by the Monitor summarizing the Plan;
  - ii. The Notice to Affected Creditors;
  - iii. The Plan;
  - iv. The Meeting Order; and
  - v. A blank form of the Affected Creditors’ Proxy

## **CREDITORS’ MEETING**

- 21. The Creditors’ Meeting commenced at 10:00 a.m. Calgary time on Tuesday, December 13, 2016 at the offices of Bennett Jones LLP, 4500 Bankers Hall East, 855 – 2<sup>nd</sup> Ave S.W. Calgary, Alberta. Attendees were asked to sign in upon arriving at the Creditors’ Meeting. A total of six Affected Creditors attended the Creditors’ Meeting in person.
- 22. The purpose of the meeting was to allow Affected Creditors with Voting Claims to consider and vote the Applicants’ Plan.

23. Mr. Dustin Olver, Managing Director of FTI Consulting Canada Inc., acted as chair (“**Chair**”) of the Creditor’s Meeting. A quorum was present at the Creditors’ Meeting and, accordingly, the Chair declared the meeting to be properly constituted. Representatives of the Applicants and the Monitor were available to answer questions throughout the Creditors’ Meeting.
24. The Chair opened the Creditor’s Meeting by providing an overview of the Plan and offered attendees the opportunity to pose any questions they may have with respect to the Plan or the restructuring process.
25. The Chair then reviewed the guidelines for the voting process in accordance with the Meeting Order and advised the attendees that there were no Disputed Voting Claims.
26. The Chair advised that there was one voting class of creditors with unsecured claims (“**Affected Creditor Class**”) and that the Affected Creditor Class was comprised of 95 Affected Creditors with aggregate unsecured claims of \$820,651,554.

***QRI Claim***

27. The Chair noted that one of the claims within the Affected Creditor Class was an inter-company claim in the amount of \$542,579,686 (“**QRI Claim**”) that related to a claim filed by Quicksilver Resources Inc. (“**QRI**”).
28. By way of background, the Monitor has previously reviewed the detailed supporting documentation of the QRI Claim including the following documentation:
  - (a) Financial statements and related note disclosures;



- (b) Audited opinions relating to the financial statements that included the accounting and classification of the QRI Claim;
  - (c) Journal entries and supporting vouchers;
  - (d) Supporting promissory notes;
  - (e) Bank statements and other documentation relating to the advance of funds from QRI to QRCI; and
  - (f) Support for various inter-company charges included in the QRI Claim.
29. The Monitor also had discussions with QRCI's management regarding the QRI Claim. Following this review, the Monitor determined that the QRI Claim was a valid unsecured Claim against QRCI.
30. QRCI is a wholly-owned subsidiary of QRI. On March 17, 2015, QRI, and certain of its affiliates, filed voluntary petitions for relief under Chapter 11 of the United States Code (the "**Chapter 11 Cases**") in the United States Bankruptcy Court ("**U.S. Court**") for the District of Delaware. QRCI was not a debtor entity in the Chapter 11 Cases. On August 16, 2016, the U.S Court entered an order (the "**Confirmation Order**") confirming the First Amended Joint Chapter 11 Plan of Liquidation for Quicksilver Resources Inc. and its Affiliated Debtors (the "**Chapter 11 Plan**"). The effective date of the Chapter 11 Plan was August 31, 2016 ("**Effective Date**"). A copy of the Chapter 11 Plan is attached as Appendix A.

31. The Chapter 11 Plan called for the establishment of a liquidation trust. On the Effective Date of the QRI Plan all of the assets of QRI (including the QRI Claim) were transferred to a liquidation trust established for the benefit of QRI's creditors (the "**Liquidation Trust Assets**") and an independent liquidation trustee ("**Liquidation Trustee**") was appointed for the purposes of administering the Liquidating Trust Assets and making distributions on account thereof. The Liquidation Trustee is Eugene I. Davis, the President and Chief Executive Officer of Pirinate Consulting Group LLC. The Monitor understands that Pirinate Consulting Group LLC is a privately owned consulting and turn-around management firm. The Liquidation Trustee provided its proxy to the Monitor voting in favour of the Plan in advance of the Creditors' Meeting.
32. The Liquidation Trustee was appointed by QRI in consultation with its creditors and the power, authority, and duties of the Liquidation Trustee are governed by the Chapter 11 Plan and a separate liquidation trust agreement ("**Liquidation Trust Agreement**"). A copy of the executed Liquidation Trust Agreement is attached as Appendix B.
33. The Liquidation Trustee operates under authority granted to it pursuant to the QRI Plan and the Liquidation Trust Agreement. Pursuant to the Liquidation Trust Agreement the actions of the Trustee are subject to the direction and oversight of the creditors of QRI. The Liquidation Trust Agreement provides the Liquidation Trustee with sole and exclusive authority to pursue recovery on the Liquidation Trust Assets and confirms that QRI has no right or claim to any the Liquidation Trust Assets.

34. The Monitor recognizes that the authority granted to the Liquidation Trustee pursuant to the Liquidation Trust Agreement could potentially permit the Liquidation Trustee to appoint new directors of QRCI by voting its shares in QRCI subject to the overriding authority of the Court pursuant to section 11.5 of the CCAA to remove such directors and order the appointment of replacement directors. However, the Liquidation Trustee has not voted QRI's shares in QRCI since its appointment over the Liquidation Trust Assets. The Monitor is not aware of any efforts by the Liquidation Trustee to exercise any voting rights attached to QRI's shares in QRCI or otherwise attempt to exert control over QRCI. Each of Mr. Darden and Mr. Rushford remain as the current directors of QRCI (and have no ongoing role at QRI) and have served in such capacity since the Filing Date.
35. The Monitor understands that the Applicants' position is that QRI and QRCI are presently acting at arm's length and, notwithstanding QRI's technical legal ownership interest in QRCI, should be treated as being unrelated persons. The Liquidation Trustee has been in exclusive control of QRI since the Effective Date of the Chapter 11 Plan and is acting solely for the benefit of the QRI creditors in accordance with the authority conferred on it under the Chapter 11 Plan and the Liquidation Trust Agreement. As a result of the Chapter 11 Plan and the Liquidation Trust Agreement, QRI and QRCI are operating at arm's length and are expected to continue to do so. In fact, upon implementation of the Plan, QRCI's directors will be deemed to resign, and the Monitor will thereafter exercise all rights and powers of QRCI. The Monitor and its counsel have reviewed the information that is publically available in respect of the Chapter 11 Cases, including the Chapter 11 Plan, the Liquidation Trust Agreement and the Confirmation Order, and is supportive of the position of the Applicants concerning the current arm's length nature of the relationship between QRI and QRCI and the treatment of QRCI and QRI as being unrelated parties.

36. At the Creditors' Meeting the Chair noted that the Monitor intended to allow the QRI Claim for voting purposes but would include a separate tabulation of the QRI Claim to determine the overall effect on the vote, if any, should parties ultimately disagree with the Monitor's position on the right of the Liquidation Trustee to vote the QRI Claim.

*Issues raised by MNP at the Meeting with respect to the QRI Claim*

37. The Chair asked if any attendees had questions with respect to the QRI Claim. A representative of MNP Ltd. ("**MNP Representative**") who was attending the meeting on behalf of MNP Ltd. ("**MNP**") advised that MNP had concerns with respect to the QRI Claim. By way of background, MNP is the trustee in bankruptcy for the Partnership and MMI. The Partnership is an Affected Creditor of the Applicants and holds a Voting Claim in the amount of \$158,894,755.
38. At the request of MNP, the Monitor had previously provided MNP with a copy of the QRI Claim on November 8, 2016 pursuant to confidentially arrangements. The Monitor and MNP subsequently exchanged correspondence concerning the denomination of the QRI Claim on November 16, 2016. Prior to the meeting, MNP had not raised any issue regarding the validity or merit of the QRI Claim.
39. The MNP Representative advised the Meeting that he had instructions to vote against the Plan unless the Applicants were willing to agree to temporarily hold back the distribution ("**QRI Distribution**") that would become payable on the QRI Claim upon implementation of the Plan. The MNP Representative advised that MNP was requesting a further opportunity to review the QRI Claim.

40. The Applicants advised the MNP Representative that they could not agree to these conditions as they did not have the authority to agree to hold back the QRI Distribution and that consent to hold back the QRI Distribution could only be granted by the Liquidation Trustee, who has authority over the QRI Claim.
41. The Chair allowed a short recess to allow the MNP Representative time to consult and seek instructions with respect to its position. During this recess the Chair, the Applicants and MNP consulted with counsel for the other creditor of the Partnership. The MNP Representative then returned to the Creditors' Meeting, the Creditors' Meeting was reconvened and the MNP Representative advised that he had instructions from the other creditor of the partnership to seek an adjournment of the Creditors' Meeting of indefinite length, to allow the Trustee to review the issue of the Liquidation Trustee's ability to vote the QRI Claim. No other Affected Creditors present at the Creditors' Meeting were willing to second the motion for an adjournment of the Creditors' Meeting and accordingly the motion for an adjournment of the Creditors' Meeting was denied.
42. The Chair and the Applicants advised that they intended to proceed with the vote with respect to the resolution to approve the Plan. The Chair advised that the votes would be tabulated separately to show the results including the QRI Claim and excluding the QRI Claim.
43. The MNP Representative advised that since the Applicants would not agree to hold back the QRI Dividend and not willing to adjourn the Creditors' Meeting to allow the Trustee additional time to review the QRI Claim and issue of the Liquidation Trustee's ability to vote the QRI Claim, his instructions were to vote against and Plan. The MNP Representative then submitted a vote to the scrutineer on behalf of the Partnership, voting against the Plan.

## *Results of Vote*

44. The scrutineer tabulated the votes and presented them to the Affected Creditors present at the Creditors' Meeting. In respect of the resolution to approve the Plan, the Affected Creditors voted as follows:

### *All Votes - including QRI Claim*

	Number	Value (\$000's)	% Number	% Value
In Favour	54	\$ 655,099	98.18%	80.48%
Against	1	\$ 158,895	1.82%	19.52%
<b>Total Voting</b>	<b>55</b>	<b>\$ 813,993</b>		

### *Votes - excluding QRI Claim*

	Number	Value (\$000's)	% Number	% Value
In Favour	53	\$ 112,519	98.15%	41.46%
Against	1	\$ 158,895	1.85%	58.54%
<b>Total Voting</b>	<b>54</b>	<b>\$ 271,414</b>		

45. The Monitor notes that with all votes tabulated (including the QRI Claim) the Affected Creditors voting in favour of the Plan represent more than the required majority in number and the required 2/3<sup>rd</sup> in dollar value to approve the Plan in accordance with the CCAA. With the QRI Claim excluded from voting the required majority in head count was achieved however the required 2/3<sup>rd</sup> in dollar value voting in favour was not achieved.

46. It is the Applicants' and the Monitor's view that the QRI Claim is a valid unsecured Claim and that the Liquidation Trustee is entitled to vote the QRI Claim in favour of the Plan, for the reasons specified above. The Monitor is of the view that the vote should be tabulated including the QRI Claim and accordingly the Monitor is of the view that the Plan was approved by the Affected Creditors at the Creditors' Meeting. At the Creditors' Meeting, the Chair advised the Affected Creditors of this view and declared that the resolution to approve the Plan had been passed.

### **THIRD PARTY RELEASES**

47. The Plan provides for releases to certain third-parties, in a customary form and in line with previous Plans approved by this Honourable Court. The beneficiaries of the releases, including the directors and officers of the Applicants, provided significant benefit to the Applicants and their creditors over the course of the CCAA Proceedings. The work undertaken by the beneficiaries of the releases included identifying potential purchasers, negotiating and completing asset sale transactions and distributing proceeds to the Applicants' senior secured lender. The beneficiaries of the releases also assisted with resolving claims made against the Applicants and negotiating a settlement and support agreement with the terminated employees that resulted in significant support for the Plan. The Monitor is of the view that the releases in favour of the third parties are reasonable and appropriate in the circumstances.

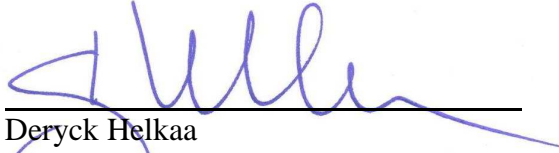
## CONCLUSIONS AND RECOMMENDATIONS

48. The Monitor respectfully recommends that the Applicants' motion for an Order sanctioning its Plan be approved by this Honourable Court on the basis that:
- (a) Notice of the Creditors' Meeting held to approve consider and vote on the Plan was duly given, and the Creditors' Meeting was duly constituted and the voting was properly carried out, all in accordance with the Meeting Order;
  - (b) As discussed in the Monitor's Eight Report, the Plan is fair and equitable and offers Affected Creditors a distribution that is better than the alternative, including a liquidation;
  - (c) The Affected Creditors, voting in person or by proxy at the Creditors' Meeting approved the Plan by amounts in excess of the amounts required by the CCAA; and
  - (d) To the best of the Monitor's knowledge, the Applicants have complied with all statutory requirements of the CCAA and all previous orders of this Honourable Court and have not done or purported to do anything which is not authorized by the CCAA or previous Orders of this Honourable Court.



All of which is respectfully submitted this 14<sup>th</sup> day of December, 2016.

FTI Consulting Canada Inc.  
in its capacity as the Court-Appointed Monitor  
of Quicksilver Resources Canada Inc.



Deryck Helkaa  
Senior Managing Director  
FTI Consulting Canada Inc.



Dustin Olver  
Managing Director  
FTI Consulting Canada Inc.

# Appendix A

## Chapter 11 Plan

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
Quicksilver Resources Inc., <u>et al.</u> , <sup>1</sup>	)	Case No. 15-10585 (LSS)
Debtors.	)	Jointly Administered
	)	Re: Docket No. 1525

**ORDER CONFIRMING FIRST AMENDED JOINT CHAPTER  
11 PLAN OF LIQUIDATION FOR QUICKSILVER  
RESOURCES INC. AND ITS AFFILIATED DEBTORS**

A HEARING HAVING BEEN HELD BY THE COURT on August 15, 2016 (the “Confirmation Hearing”), to consider confirmation of the *First Amended Joint Chapter 11 Plan of Liquidation for Quicksilver Resources Inc. and its Affiliated Debtors*, the solicitation version of which was dated July 5, 2016 [Docket No. 1525],<sup>2</sup> and a final version of which is attached hereto as Exhibit A (the “Amended Plan”), proposed by Quicksilver Resources Inc. and its affiliated debtors and debtors in possession (collectively, the “Debtors”);

THE COURT NOTING that the *Disclosure Statement for First Amended Joint Chapter 11 Plan of Liquidation for Quicksilver Resources Inc. and its Affiliated Debtors*, the solicitation version of which is dated July 5, 2016 [Docket No. 1526] (the “Disclosure Statement”), has been previously approved by the Court, pursuant to the *Order Approving the Disclosure Statement, Voting Procedures, and Confirmation Procedures* [Docket No. 1505], entered on June 29, 2016 (the “Disclosure Statement Order”);

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Quicksilver Resources Inc. [6163]; Barnett Shale Operating LLC [0257]; Cowtown Drilling, Inc. [8899]; Cowtown Gas Processing L.P. [1404]; Cowtown Pipeline Funding, Inc. [9774]; Cowtown Pipeline L.P. [9769]; Cowtown Pipeline Management, Inc. [9771]; Makarios Resources International Holdings LLC [1765]; Makarios Resources International Inc. [7612]; QPP Holdings LLC [0057]; QPP Parent LLC [8748]; Quicksilver Production Partners GP LLC [2701]; Quicksilver Production Partners LP [9129]; and Silver Stream Pipeline Company LLC [9384]. The Debtors’ address is 801 Cherry Street, Suite 4000, Fort Worth, Texas 76102.

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Disclosure Statement or the Plan, as applicable.

IT APPEARING TO THE COURT that the Court-approved solicitation and noticing procedures have been followed as set forth in the *Declaration of Craig E. Johnson of Garden City Group, LLC, Certifying the Methodology for the Tabulation of Votes and Results of Voting with Respect to the First Amended Joint Chapter 11 Plan of Liquidation of Quicksilver Resources Inc. and Its Affiliated Debtors*, dated August 9, 2016 [Docket No. 1602] (the “Voting Certification”); an affidavit of service having been executed by Garden City Group, LLC with respect to the mailing of notice of the Confirmation Hearing and solicitation materials in accordance with the Disclosure Statement Order (the “Affidavit of Service”) and having been filed with the Court on July 11, 2016 [Docket No. 1541]; and the affidavits of publication of the *Confirmation Hearing Notice* (the “Affidavits of Publication”) in *The New York Times* and *Star-Telegram* in accordance with the Disclosure Statement Order having been filed with the Court on July 12, 2016 [Docket Nos. 1549 & 1550];

IT FURTHER APPEARING TO THE COURT that the Debtors have filed with the Court (a) the Plan Supplement dated July 26, 2016 [Docket No. 1580] (as amended or modified from time to time, the “Plan Supplement”) containing the (i) the Liquidation Trust Agreement; (ii) the Schedule of Assumed Contracts and Leases; (iii) the Schedule of Contracts and Leases Neither Assumed Nor Rejected; and (iv) Identification of the Liquidation Trustee and (b) the Second Notice of Filing of Plan Supplement Documents dated August 11, 2016 [Docket No. 1612] containing a revised version of the Schedule of Assumed Contracts and Leases (the “Second Plan Supplement”);

IT FURTHER APPEARING TO THE COURT that the deadline for casting ballots to accept or reject the Amended Plan has passed and that the results of voting have been certified by Garden City Group, LLC, acting as balloting and solicitation agent, as set forth in the Voting Certification;

IT FURTHER APPEARING TO THE COURT that (i) the Debtors have filed the *Declaration of Vanessa Gomez LaGatta in Support of the Debtors' Memorandum of Law in Support of Confirmation and Omnibus Reply to Objections to Confirmation of the First Amended Joint Chapter 11 Plan for Quicksilver Resources Inc. and Its Affiliated Debtors*, dated August 9, 2016 [Docket No. 1603] (the "LaGatta Declaration"), (ii) the Debtors have filed the *Declaration of Adam Dunayer in Support of Debtors' Memorandum of Law in Support of Confirmation and Omnibus Reply to Objections to Confirmation of the First Amended Joint Chapter 11 Plan for Quicksilver Resources Inc. and its Affiliated Debtors*, dated August 9, 2016 [Docket No. 1604] (the "Dunayer Declaration"), (iii) the Debtors have presented testimony, evidence and argument of counsel in support of confirmation of the Amended Plan, and (iv) other parties in interest have had the opportunity to present additional testimony, evidence or argument of counsel;

NOW, THEREFORE, based upon the Court's review of (i) the Disclosure Statement, (ii) the Amended Plan, (iii) the Plan Supplement, (iv) the Second Plan Supplement, (v) the LaGatta Declaration, (vi) the Dunayer Declaration, (vii) the Voting Certification, (viii) the Affidavits of Publication, and (ix) all of the evidence proffered or adduced at, filings in connection with, and arguments of counsel made at, the Confirmation Hearing; and after due deliberation thereon and good cause appearing therefor, and all objections to the Amended Plan having been overruled or withdrawn, and for the reasons set forth on the record at the Confirmation Hearing,

IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>

A. Jurisdiction; Venue; Core Proceeding. The Court has jurisdiction over these chapter 11 cases pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C.

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<sup>3</sup> The findings of fact and the conclusions of law stated in this Confirmation Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the proceeding by Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

§§ 1408 and 1409. Confirmation of the Amended Plan is a core proceeding pursuant to 28 U.S.C. § 157(b) upon which this Court may issue a final order, and confirmation of a plan by this Court is a constitutional exercise of the jurisdiction conferred by Congress on this Court. This Court has exclusive jurisdiction to determine whether the Amended Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

B. Transmittal and Mailing of Solicitation Materials and Notices. The solicitation materials and notices prescribed by the Disclosure Statement Order were served in compliance with the Disclosure Statement Order, and such service was appropriate and sufficient. Appropriate and sufficient notice of the Confirmation Hearing and the other deadlines and matters required to be noticed pursuant to the Disclosure Statement Order was given in compliance with the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order, and no other or further notice is or shall be required.

C. Adequacy of Solicitation Procedures. All procedures used to distribute the solicitation materials to the appropriate creditors entitled to vote on the Amended Plan and to tabulate the ballots returned by creditors were fair and were conducted in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order. Votes for acceptance or rejection of the Amended Plan were solicited and cast in good faith, and only after transmittal of the approved Disclosure Statement, and otherwise in compliance with Bankruptcy Code sections 1125 and 1126 and Bankruptcy Rules 3017 and 3018.

D. Good Faith Solicitation -- 11 U.S.C. § 1125(e). The Debtors and their Professional Persons have acted in good faith within the meaning of Bankruptcy Code sections 1125(e) and 1129(a)(3), and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order in connection with all of their

respective activities relating to the solicitation of acceptances of the Amended Plan and their participation in the activities described in Bankruptcy Code section 1125, and are entitled to the protections afforded by Bankruptcy Code section 1125(e) and, to the extent applicable, the release, exculpation and injunctive provisions set forth in Sections 11.3, 11.4, 11.5 and 11.6 of the Amended Plan.

E. Impaired Class that Has Voted to Accept or Reject the Plan. Classes 4, 5 and 6 are Impaired under and entitled to vote on the Amended Plan. As evidenced by the Voting Certification, which certified both the method and results of the voting, Classes 4 and 5 have voted to accept the Amended Plan pursuant to the requirements of Bankruptcy Code section 1124 and 1126. Further, as evidenced by the Voting Certification, Class 6 has voted to reject the Amended Plan.

F. Classes Deemed to Accept Plan. Classes 1, 2 and 3 are Unimpaired under the Amended Plan. Pursuant to Bankruptcy Code section 1126(f), holders of such Unimpaired Claims are conclusively presumed to have accepted the Amended Plan.

G. Releases, Exculpation and Injunction. The release, exculpation and injunction provisions set forth in Sections 11.3, 11.4, 11.5 and 11.6 of the Amended Plan: (i) are within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), 1334(b) and 1334(d); (ii) are an essential means of implementing the Amended Plan pursuant to Bankruptcy Code section 1123(a)(5); (iii) are an integral element of the transactions incorporated into the Amended Plan; (iv) confer material benefits on, and are in the best interests of, the Debtors, their Estates and their creditors; (v) are important to the overall objectives of the Amended Plan to finally resolve all Claims among or against the key parties in interest in these chapter 11 cases with respect to the Debtors; and (vi) are consistent with Bankruptcy Code sections 105, 1123 and 1129, and other applicable provisions of the Bankruptcy Code. With respect to the releases provided by the Debtors in

Sections 11.3 and 11.4 of the Amended Plan, pursuant to Bankruptcy Rule 9019 and the applicable provisions of the Bankruptcy Code, such releases are approved after due notice and opportunity for hearing. The record of the Confirmation Hearing and these chapter 11 cases is sufficient to support the release, exculpation and injunction provisions contained in the Amended Plan.

H. Plan Compliance with Bankruptcy Code -- 11 U.S.C. § 1129(a)(1). The Amended Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying Bankruptcy Code section 1129(a)(1).

(i) Proper Classification -- 11 U.S.C. §§ 1122, 1123(a)(1). Aside from Administrative Expense Claims, Adequate Protection Claims, Fee Claims, Priority Tax Claims and U.S. Trustee Fees, which need not be classified, the Amended Plan designates nine Classes of Claims and Interests. The Claims and Interests placed in each Class are substantially similar to other Claims and Interests, as the case may be, in each such Class. Valid factual and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Amended Plan, and such Classes do not unfairly discriminate among holders of Claims and Interests. Thus, the Amended Plan satisfies Bankruptcy Code sections 1122 and 1123(a)(1).

(ii) Specify Unimpaired Classes -- 11 U.S.C. § 1123(a)(2). Article III of the Amended Plan specifies that Classes 1, 2 and 3 are Unimpaired under the Amended Plan, thereby satisfying Bankruptcy Code section 1123(a)(2).

(iii) Specify Treatment of Impaired Classes -- 11 U.S.C. § 1123(a)(3). Article III of the Amended Plan specifies that Classes 4, 5, 6, 7, 8 and 9 are Impaired and the treatment of such Claims and Interests in those Classes, thereby satisfying Bankruptcy Code section 1123(a)(3).



(iv) No Discrimination -- 11 U.S.C. § 1123(a)(4). The Amended Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class unless the holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Equity Interest, thereby satisfying Bankruptcy Code section 1123(a)(4).

(v) Implementation of Plan -- 11 U.S.C. § 1123(a)(5). The Amended Plan provides adequate and proper means for its implementation, thereby satisfying Bankruptcy Code section 1123(a)(5).

(vi) Additional Plan Provisions -- 11 U.S.C. § 1123(b). The Amended Plan's additional provisions are appropriate and not inconsistent with the applicable provisions of the Bankruptcy Code.

- (1) Impairment of Claims and Interests and Assumption and Assignment or Rejection of Executory Contracts or Unexpired Leases - 11 U.S.C. § 1123(b)(1) - (2). Article III of the Amended Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Interests. Article VIII of the Amended Plan provides for the assumption of only the Executory Contracts and Unexpired Leases listed on the Schedule of Assumed Contracts and Leases. Article VIII of the Amended Plan provides for the rejection of all Executory Contracts and Unexpired Leases of the Debtors unless any such Executory Contract and Unexpired Lease: (a) is listed on the Schedule of Assumed Contracts or Leases, (b) is listed on the Schedule of Contracts and Leases Neither Assumed or Rejected, or (c) is otherwise assumed pursuant to the terms of the Amended Plan; *provided, however*, that any Executory Contracts or Unexpired Leases that are subject of a separate motion to assume or reject under Bankruptcy Code section 365 pending on the Effective Date shall be treated as provided in the Final Order resolving such motion; *provided further, however*, to the fullest extent permitted by applicable law, all indemnification provisions in existence prior to the date on which these chapter 11 cases were filed (whether in the by-laws, certificates of incorporation or formation, limited liability company agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, or otherwise) for any current or former directors, officers, managers, employees, direct and indirect sponsors, shareholders, direct and indirect affiliates, attorneys, accountants, investment bankers, or

other professionals of the Debtors, as applicable, shall be reinstated, assumed, and remain intact and irrevocable and shall survive the Effective Date.

- (2) Retention, Enforcement, and Settlement of Claims - 11 U.S.C. § 1123(b)(3). The Amended Plan incorporates a settlement and compromise of all Claims and controversies by and among the Committee, the Indenture Trustees, the Second Lien Agent, the Second Lien Lenders, and the Second Lien Noteholders. The settlement was negotiated in good faith and at arm's length and is an essential element of the Amended Plan. It is fair, equitable, and in the best interests of the Debtors, the Debtors' Estates, the Debtors' creditors, and all parties in interest, and satisfies the standards for approval under Bankruptcy Rule 9019.

Except as otherwise provided in the Amended Plan, this Confirmation Order, or the Liquidation Trust Agreement after the transfer of the Liquidation Trust Assets, pursuant to Section 9.6.2 of the Amended Plan, 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. Subject to the terms of the Liquidation Trust Agreement, the Liquidation Trustee will 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. Subject to the terms of the Liquidation Trust Agreement, 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. Liquidation Trust Causes of Action may only be prosecuted or settled by the Liquidation Trustee, in its sole discretion, subject to the terms of the Liquidation Trust Agreement.

- (3) Sale of All or Substantially All of the Property of the Estate - 11 U.S.C. § 1123(b)(4). The Amended Plan effectuates the distribution of the Sale Proceeds.
- (4) Modification of Rights of Holders of Claims - 11 U.S.C. § 1123(b)(5). Article III of the Amended Plan modifies or leaves unaffected, as the case may be, the rights of holders of each Class of Claims.
- (5) Other Provisions Not Inconsistent with Applicable Provisions of the Bankruptcy Code; Deemed Consolidated - 11 U.S.C. § 1123(b)(6). The other discretionary provisions of the Amended Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code.

(vii) Compliance with Fed. R. Bankr. P. 3016. The Amended Plan is dated and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the Court satisfies Bankruptcy Rule 3016(b). Further, the Amended Plan and Disclosure Statement describe in specific and conspicuous language all acts to be enjoined and identify the entities that are subject to the injunction, satisfying Bankruptcy Rule 3016(c) to the extent applicable.

(viii) Compliance with Fed. R. Bankr. P. 3017. The Debtors have given notice of the Confirmation Hearing as required by Bankruptcy Rule 3017(d) and the Disclosure Statement Order. The solicitation materials prescribed by the Disclosure Statement Order were transmitted to the holders of Claims entitled to vote on the Amended Plan in accordance with Bankruptcy Rule 3017(d).

(ix) Compliance with Fed. R. Bankr. P. 3018. The solicitation of votes to accept or reject the Amended Plan satisfies Bankruptcy Rule 3018. The Amended Plan was transmitted to all holders of Claims entitled to vote on the Amended Plan, sufficient time was prescribed for such holders to accept or reject the Amended Plan, and the solicitation materials used and solicitation procedures followed comply with Bankruptcy Code sections 1125 and 1126, thereby satisfying the requirements of Bankruptcy Rule 3018.

I. Compliance with Bankruptcy Code -- 11 U.S.C. § 1129(a)(2). The Amended Plan Proponents have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying Bankruptcy Code section 1129(a)(2).

J. Plan Proposed in Good Faith -- 11 U.S.C. § 1129(a)(3). The Debtors have proposed the Amended Plan in good faith and not by any means forbidden by law, thereby satisfying Bankruptcy Code section 1129(a)(3). In determining that the Amended Plan has been

proposed in good faith, the Court has examined the totality of the circumstances surrounding the formulation of the Amended Plan. The Debtors filed their chapter 11 cases, and the Amended Plan was proposed, with legitimate and honest purposes including, among other things, maximization of the recovery to creditors under the circumstances of the cases. Furthermore, the Amended Plan reflects and is the result of arm's-length and good-faith negotiations among the Debtors, the Committee and other parties in interest in these chapter 11 cases and is consistent with the best interests of the Debtors' Estates and creditors.

K. Payments for Services or Costs and Expenses -- 11 U.S.C. § 1129(a)(4). To the extent applicable, all payments made or to be made by the Debtors or by a person acquiring property under the Amended Plan, for services or for costs and expenses in or in connection with these chapter 11 cases, or in connection with the Amended Plan and incident to these chapter 11 cases, have been approved by, or are subject to the approval of, the Court as reasonable, thereby satisfying Bankruptcy Code section 1129(a)(4).

L. Director, Officers and Insiders -- 11 U.S.C. § 1129(a)(5). On the Effective Date, the authority, power and incumbency of the persons then acting as directors, officers, managers and other authorized persons of the Debtors shall be terminated and such persons shall be deemed to have resigned. On the Effective Date and in compliance with the provisions of the Amended Plan and the Liquidation Trust Agreement, the Debtors shall appoint a person or firm as Liquidation Trustee that is reasonably acceptable to the Consultation Parties. In the Plan Supplement, the Debtors identified the person that will serve as the initial Liquidation Trustee. This individual is not an insider of the Debtors. At or prior to the Confirming Hearing, the Debtors identified any insider whom the Debtors have or who will be engaged to assist the Liquidation Trustee. The Debtors further believe that the appointment to such office of such

individuals is consistent with the interests of creditors and equity security holders and with public policy. Therefore, the Amended Plan satisfies Bankruptcy Code section 1129(a)(5).

M. No Rate Changes -- 11 U.S.C. § 1129(a)(6). There is no regulatory commission having jurisdiction after confirmation of the Amended Plan over the rates of the Debtors and no rate change provided for in the Amended Plan requiring approval of any such commission. Therefore, Bankruptcy Code section 1129(a)(6) is not applicable.

N. Best Interests of Creditors -- 11 U.S.C. § 1129(a)(7). The Amended Plan satisfies Bankruptcy Code section 1129(a)(7). The liquidation analysis included in the Disclosure Statement and any other evidence proffered or adduced at the Confirmation Hearing (i) are persuasive and credible, (ii) have not been controverted by other evidence, and (iii) establish that each holder of an Impaired Claim or Interest either has accepted the Amended Plan or will receive or retain under the Amended Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

O. Acceptance or Rejection by Certain Classes -- 11 U.S.C. § 1129(a)(8). Classes 1, 2, and 3 are Classes of Unimpaired Claims that are conclusively presumed to have accepted the Amended Plan under Bankruptcy Code section 1126(f). Classes 4 and 5 are Impaired and, as set forth in the Voting Certification, the holders of such Claims have voted to accept the Amended Plan. Class 6 is Impaired and, as set forth in the Voting Certification, the holders of such Claims have voted to reject the Amended Plan. Classes 7, 8 and 9 are Classes of Impaired Claims and that are conclusively presumed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g). Notwithstanding that Bankruptcy Code section 1129(a)(8) has not been satisfied with respect to all Classes, pursuant to Bankruptcy Code section 1129(b), the Plan may be confirmed over the nonacceptance of Classes, 6, 7, 8 and 9.

P. Treatment of Administrative and Priority Tax Claims -- 11 U.S.C. § 1129(a)(9).

The treatment of Administrative Expense Claims, Fee Claims and Priority Tax Claims pursuant to Article II of the Amended Plan satisfies the requirements of Bankruptcy Code section 1129(a)(9)(A), (B) and (C).

Q. Acceptance by Impaired Class -- 11 U.S.C. § 1129(a)(10). Classes 4 and 5, each entitled to vote on the Amended Plan, have voted to accept the Amended Plan in accordance with Bankruptcy Code section 1126(c). The accepting Classes, Classes 4 and 5, have accepted the Amended Plan pursuant to Bankruptcy Code section 1126(c) without the votes of insiders with Allowed Claims. Therefore, the requirement of Bankruptcy Code section 1129(a)(10), that at least one Class of Claims against or Interests in the Debtors that is Impaired under the Amended Plan has accepted the Amended Plan, determined without including any acceptance of the Amended Plan by any insider, has been satisfied.

R. Feasibility -- 11 U.S.C. § 1129(a)(11). The Amended Plan calls for liquidation of the Debtors. Therefore, confirmation of the Amended Plan is not likely to be followed by the need for further financial reorganization of the Debtors, thereby satisfying (or eliminating the need to consider) Bankruptcy Code section 1129(a)(11).

S. Payment of Fees -- 11 U.S.C. § 1129(a)(12). All fees due and payable under 28 U.S.C. § 1930 on or before the Effective Date, as determined by the Court, have been paid or will be paid on the Effective Date pursuant to Section 2.5 of the Amended Plan, thus satisfying the requirements of Bankruptcy Code section 1129(a)(12).

T. Continuation of Retiree Benefits -- 11 U.S.C. § 1129(a)(13). The Debtors have no retiree benefit obligations and, thus, Bankruptcy Code section 1129(a)(13) is inapplicable.

U. Postpetition Domestic Support Obligations and Disposable Income -- 11 U.S.C. § 1129(a)(14) and (15). Bankruptcy Code section 1129(a)(14) and (15) impose certain

requirements on individual chapter 11 debtors. None of the Debtors are individuals. Accordingly, such sections are not implicated by the Amended Plan.

V. No Applicable Nonbankruptcy Law Regarding Transfers -- 11 U.S.C. § 1129(a)(16). The Debtors are moneyed, business, and/or commercial corporations and, therefore, Bankruptcy Code section 1129(a)(16) is not applicable.

W. Fair and Equitable; No Unfair Discrimination as to Rejecting Class -- 11 U.S.C. § 1129(b). Holders of Claims in Class 6 are Impaired and have voted to reject the Amended Plan. Holders of Interests in Classes 7, 8 and 9 are Impaired and deemed to have rejected the Amended Plan. Based upon the evidence proffered, adduced, and presented by the Debtors at the Confirmation Hearing, the Amended Plan does not discriminate unfairly and is fair and equitable with respect to the aforementioned Classes, as required by Bankruptcy Code section 1129(b)(1) and (b)(2), because no holder of any Claim or Interest of the Debtors that is junior to the Claims or Interests of Classes 6, 7, 8 or 9 is receiving or retaining any property under the Amended Plan on account of such junior Claims or Interests against the Debtors. Accordingly, the requirements of Bankruptcy Code section 1129(b)(1) and (b)(2) are satisfied with respect to Classes 6, 7, 8 and 9, and the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to Classes 6, 7, 8 and 9. Thus, the Amended Plan may be confirmed notwithstanding the deemed rejection of Classes 6, 7, 8 and 9.

X. Only One Plan -- 11 U.S.C. § 1129(c). Other than the Amended Plan (including previous versions thereof), no other plan has been filed in these chapter 11 cases. Accordingly, the requirements of Bankruptcy Code section 1129(c) have been satisfied.

Y. Principal Purpose -- 11 U.S.C. § 1129(d). The principal purpose of the Amended Plan is neither the avoidance of taxes nor the avoidance of the application of Section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the

Amended Plan on any such grounds. The Amended Plan, therefore, satisfies the requirements of Bankruptcy Code section 1129(d).

Z. No Objection to Disposition of Contracts and Leases. No party to an Executory Contract or Unexpired Lease to be rejected by the Debtors pursuant to the Amended Plan has objected to the rejection thereof.

AA. Burden of Proof. The Debtors have met their burden of proving the elements of Bankruptcy Code section 1129(a) and (b) by a preponderance of the evidence.

BB. Satisfaction of Confirmation Requirements. The Amended Plan satisfies the requirements for confirmation set forth in Bankruptcy Code section 1129.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Confirmation of Amended Plan. The Amended Plan including the Plan Supplement is approved and confirmed under Bankruptcy Code section 1129.

2. Binding Effect. Effective on the Effective Date, and except as expressly provided in this Confirmation Order, the Amended Plan and its provisions shall be binding upon the Debtors, the Liquidation Trust, the Liquidation Trustee, the Creditors' Committee, any individual or entity acquiring or receiving property or a distribution under the Amended Plan and any holder of a Claim against or Interest in the Debtors, including all governmental entities, whether or not the Claim or Interest of such holder is Impaired under the Amended Plan and whether or not such holder has accepted the Amended Plan. Pursuant to Bankruptcy Code sections 1123(a) and 1142(a) and the provisions of this Confirmation Order, from and after the Effective Date, the Debtors, the Liquidation Trust and the Liquidation Trustee shall comply with the Amended Plan, the Plan Supplement and all other Amended Plan-related documents, and the Amended Plan, the Plan Supplement and all other Amended Plan-related documents shall be enforceable notwithstanding any otherwise applicable non-bankruptcy law.



3. Application of Absolute Priority Rule. The Amended Plan satisfies the requirements of Bankruptcy Code section 1129(b) with respect to Classes 6, 7, 8 and 9 (*i.e.* the rejecting Classes). Therefore, the treatment of Classes 6, 7, 8 and 9 is approved.

4. Releases. The release provisions of Sections 11.3 and 11.4 of the Amended Plan, as modified by this Confirmation Order, are approved, are incorporated by reference into and are an integral part of this Confirmation Order. Such provisions shall be effective in accordance with their terms.

5. Exculpation. The exculpation provisions of Section 11.5 of the Amended Plan are approved, are incorporated by reference into and are an integral part of this Confirmation Order. Such provisions shall be effective in accordance with their terms.

6. Injunction. The injunction provisions of Section 11.6 of the Amended Plan are approved, incorporated by reference into and an integral part of this Confirmation Order. Such provisions shall be effective in accordance with their terms.

7. Cancellation of Interests. Pursuant to Section 5.9 of the Amended Plan, on the Effective Date, except for the purpose of evidencing a right to distribution under the Amended Plan and except as otherwise set forth in the Amended Plan, 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. Notwithstanding the foregoing, as set forth in paragraph 23 below, each of the Indentures shall continue in effect solely for the purposes of, as applicable: (a) allowing holders of Allowed Class 4 and Class 5 Claims to receive distributions under the Amended Plan; (b) allowing holders of Allowed Class 5 Claims to enforce the subordination provisions in the Subordinated Notes Indenture against holders of Allowed Class 6 Claims; and (c) allowing and preserving the rights of the Indenture Trustees to (i) make distributions in

satisfaction of Allowed Class 4 and 5 Claims, (ii) maintain and exercise their respective Charging Liens against holders of Allowed Senior Notes Claims and Allowed Subordinated Notes Claims, as applicable, and distributions thereto, (iii) seek compensation and reimbursement for any reasonable and documented fees and expenses incurred in making such distributions, (iv) maintain and enforce any right to indemnification, expense reimbursement, contribution, or subrogation or any other claim or entitlement that the Indenture Trustees may have under the applicable Indentures, (v) exercise their rights and obligations relating to the interests of their holders pursuant to the applicable Indentures, and (vi) appear in these chapter 11 cases. For the avoidance of doubt, all indemnification obligations and expense reimbursement obligations of the Debtors arising under the Indentures in favor of the Indenture Trustees, and each of their respective directors, officers, employees, agents, affiliates, controlling persons, and legal and financial advisors, shall survive, remain in full force and effect, and be enforceable against the Liquidation Trustee on and after the Effective Date and solely enforceable through the exercise of the applicable Charging Lien against the holders of Allowed Senior Notes Claims, Second Lien Secured Claims, and Allowed Subordinated Notes Claims, as applicable, and distributions thereto.

8. Amended Plan Implementation Authorization. In accordance with Bankruptcy Code section 1142, upon the entry of this Confirmation Order, the Debtors, the Liquidation Trust and the Liquidation Trustee each acting by and through their respective officers and agents, hereby are authorized to take any and all actions necessary or appropriate to implement the Amended Plan, including, without limitation, forming the Liquidation Trust and entering into the Liquidation Trust Agreement (substantially in the form included in the Plan Supplement), without any further order of the Court. The Liquidation Trust shall be deemed for all purposes to have been created in connection with the Amended Plan and this Confirmation Order. Any

officer of the Debtors and/or the Liquidation Trustee, as applicable, shall be authorized to take any action as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Amended Plan, whether or not specifically referred to in the Amended Plan or any exhibit thereto, without further order of the Court or further action by the Liquidation Trust or any other person.

9. Approval of the Global Settlement. The provisions of the Amended Plan, as discussed in detail in the Disclosure Statement, constitute a good-faith compromise and settlement pursuant to Bankruptcy Rule 9019 and Bankruptcy Code section 1123 of all of the outstanding issues between the Committee, the Second Lien Agent, the Indenture Trustees, the Second Lien Lenders, and the Second Lien Noteholders in these chapter 11 cases, including, without limitation, the calculation of the Adequate Protection Claims, the Second Lien Diminution Claims, the allocation of proceeds from all sales of the Debtors' assets, and all remaining counts asserted by the Committee in its adversary proceeding. The entry of this Confirmation Order constitutes the Court's approval of all the foregoing compromises and settlements embodied in the Amended Plan, and the Court's findings shall constitute its determination that such compromises and settlements are in the best interest of the Debtors, the Estates, the creditors and other parties in interest, and are fair, equitable, and within the range of reasonableness. On the Effective Date, all matters among the Committee, the Second Lien Agent, the Indenture Trustees, the Second Lien Lenders, and the Second Lien Noteholders in these chapter 11 cases shall be fully and finally resolved and all litigation related thereto shall be dismissed with prejudice.

10. Comprehensive Settlement of Claims and Controversies. Notwithstanding anything to the contrary in the Amended Plan, Section 5.13 of the Amended Plan is limited to the settlement of the outstanding issues between the Committee, the Second Lien Agent, the

Indenture Trustees, the Second Lien Lenders, and the Second Lien Noteholders in these chapter 11 cases, including, without limitation, the calculation of the Adequate Protection Claims, the Second Lien Diminution Claims, the allocation of proceeds from all sales of the Debtors' assets, and all remaining counts asserted by the Committee in its adversary proceeding.

11. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules or regulations of any state or any other governmental authority with respect to the implementation or consummation of the Amended Plan and any documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Amended Plan, the Disclosure Statement and any documents, instruments or agreements, and any amendments or modifications thereto.

12. Objection to Claims. Notwithstanding anything to the contrary in the Amended Plan, the second sentence of Section 6.2.2 of the Amended Plan is deleted.

13. Exemption from Certain Transfer Taxes. To the extent permitted by Bankruptcy Code section 1146(a), any post-Confirmation Date transfer from a Debtor to any Person pursuant to, in contemplation of, or in connection with the Amended 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 Amended 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 Amended 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.

14. Applicable Non-Bankruptcy Law. Pursuant to Bankruptcy Code sections 1123(a) and 1142(a), the provisions of this Confirmation Order, the Amended Plan, or any other amendments or modifications thereto shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

15. Approval of Liquidation Trust and Appointment of the Liquidation Trustee. The Court finds that formation of the Liquidation Trust is an essential element of the Amended Plan, and entry into the Liquidation Trust Agreement provided in the Plan Supplement is in the reasonable exercise of the Debtors' business judgment. The entry by the Debtors into the Liquidation Trust Agreement is approved and shall not be in conflict with any federal or state law. Further, the appointment of Eugene I. Davis as Liquidation Trustee is approved.

16. Transfers by Debtor; Vesting and Revesting of Assets. All transfers of property of the Estates, including, without limitation, the vesting of the Liquidation Trust Assets in the Liquidation Trust to make distributions to the Liquidation Trust Beneficiaries to be made pursuant to Section 9.6.4 of the Amended Plan, (i) are legal, valid and effective transfers of property, (ii) vest the transferees with good title to such property free and clear of all Claims, interests, Liens, charges or other encumbrances, except as expressly provided in the Amended Plan or this Confirmation Order, (iii) do not and will not constitute avoidable transfers under the Bankruptcy Code or under applicable law, (iv) do not and will not subject the Debtors, the

Liquidation Trust or the Liquidation Trustee to any liability by reason of such transfer under the Bankruptcy Code or under applicable nonbankruptcy law, including, without limitation, any laws affecting successor, transferee or stamp or recording tax liability, and (v) are for good consideration and value. Pursuant to Bankruptcy Code sections 1141(b) and (c), all Liquidation Trust Assets shall vest in the Liquidation Trust free and clear of all Claims, interests, Liens, charges and other encumbrances. Such vesting does not constitute a voidable transfer under the Bankruptcy Code or applicable non-bankruptcy law.

17. Effect of Conflict Between Amended Plan and Confirmation Order. The provisions of the Amended Plan and of this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any Amended Plan provision and any provision of this Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall be deemed a modification of the Amended Plan and shall control and take precedence.

18. Authorization to Consummate Amended Plan. Notwithstanding Bankruptcy Rule 3020(e), this Confirmation Order shall take effect immediately upon its entry and the Debtor is authorized to consummate the Amended Plan immediately after entry of this Confirmation Order and the satisfaction or waiver of all other conditions to the Effective Date of the Amended Plan, in accordance with the terms of the Amended Plan. The Amended Plan shall become effective on the Effective Date.

19. Payment of Statutory Fees. All fees due and payable pursuant to 28 U.S.C. § 1930 shall be paid as soon as reasonably practicable following the Initial Distribution Date by

the Liquidation Trustee. After the Effective Date, the Liquidation Trustee shall pay any and all such fees when due and payable.

20. Notice of Effective Date. On or within two (2) Business Days of the Effective Date, the Debtors shall file and serve a notice of occurrence of the Effective Date in substantially the form attached hereto as **Exhibit B**.

21. Operations Between the Confirmation Date and the Effective Date. During the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to as debtors-in-possession, subject to the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect. All actions taken by the Debtors during the period from the Confirmation Date through the Effective Date shall be, and shall be taken in a manner, consistent in all material respects with the Confirmation Order, this Amended Plan and the Liquidation Trust Agreement.

22. Creation and Implementation of the Liquidation Trust. Pursuant to the Amended Plan and the Liquidation Trust Agreement, on the Effective Date, the Liquidation Trust shall be established and become effective for the benefit of the Liquidation Trust Beneficiaries. The Liquidation Trust is authorized and empowered, pursuant to the Amended Plan, including, without limitation, Section 9.2 and the Liquidation Trust Agreement, to liquidate and administer the Liquidation Trust Assets and make distributions on account thereof as provided for under the Amended Plan, provided that the Liquidation Trust shall, simultaneously with the initial distribution to holders of Allowed Second Lien Claims, make a distribution to Silver Point Capital, L.P. of the amount of its reasonable documented professional fees (in an amount not to exceed \$200,000) at the direction of the Second Lien Agent and the Second Lien Indenture Trustee (each acting at the direction of the Majority Lenders (as defined in the Second Lien Term Loan)), which distribution to Silver Point shall be deemed to have been made as a distribution to

holders of Allowed Second Lien Claims and shall be paid from Second Lien Liquidation Trust Assets.

23. Post-Effective Date Fees and Expenses. From and after the Effective Date, the Liquidation Trustee is authorized, in accordance with the Liquidation Trust Agreement, but without the necessity for any approval by the Court, to incur any reasonable and necessary expenses in connection with the performance of its duties under the Amended Plan, including in connection with retaining professionals and/or entering into agreements pursuant to Sections 9.6.3 and 9.6.9 of the Amended Plan.

24. Provisions Governing Distributions. The Debtors or Liquidation Trustee shall make all Plan Distributions required under the Amended Plan and the distribution provisions of Article VII of the Amended Plan shall be, and hereby are, approved in their entirety. For the avoidance of doubt, the Debtors acting through the Liquidation Trustee shall, on the Initial Distribution Date, make all Plan Distributions to holders of Allowed General Unsecured Claims from the Unsecured Plan Consideration available to be distributed on the Initial Distribution Date, less an amount of \$2.5 million (the "Unsecured Reserve"), which amount will be transferred to the Liquidation Trust. The Unsecured Reserve shall be held for, among other things, payment (pursuant to any applicable Charging Lien) of Indenture Trustee fees incurred after the Effective Date and payment to holders of Allowed General Unsecured Claims in connection with the claims reconciliation process.

25. Settlement of Indenture Trustees' Fees. Pursuant to section 5.14 of the Amended Plan, on the Effective Date, and without the filing of corresponding fee applications with the Bankruptcy Court, any reasonable and documented fees, costs, and expenses incurred by the Indenture Trustees (other than the Second Lien Indenture Trustee) and their professionals on or prior to the Effective Date shall be paid by the Estate in Cash up to the amount of \$400,000 (the



“Indenture Trustee Initial Fee”), with any excess amount to be paid in full on the Initial Distribution Date to each of the Indenture Trustees (other than the Second Lien Indenture Trustee) from the Unsecured Plan Consideration pursuant to any applicable Charging Lien.

26. Payment of Fees and Expenses of Second Lien Parties. The Debtors shall, on the Effective Date pay the fees and expenses of the Second Lien Agent, Second Lien Indenture Trustee, and the Ad Hoc Group of Second Lienholders (in each case whether accrued prepetition or postpetition and to the extent not otherwise paid during the Chapter 11 Cases) in the full amount invoiced (which may include estimated amounts for such fees and expenses accrued through the Effective Date but not previously paid), in each case without application by any such parties to this Court, and without notice and a hearing pursuant to section 1129(a)(4) of the Bankruptcy Code or otherwise; provided that (a) such parties shall submit such invoice to the Debtors at least 24 hours before the Effective Date and (b) such parties shall remit any excess amount, if any, paid on account of estimated fees and expenses promptly following final invoice by such party of all fees and expenses incurred.

27. Satisfaction of Claims. Except as otherwise provided in the Amended Plan or this Confirmation Order, any Plan Distributions and deliveries to be made on account of Allowed Claims under the Amended Plan shall be in complete satisfaction, settlement, and release of such Allowed Claims.

28. Setoff Rights. In the event that the value of the 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 Claim that would otherwise become due to such claimant. Neither the failure to effectuate such a setoff nor the allowance of any Claim under the Amended Plan shall constitute a waiver or release by the Debtors or the Liquidation Trustee of

any claims, rights or Causes of Action that the Debtors or the Liquidation Trust may possess against such claimant.

29. Authorization to Consummate. The Debtors are authorized to consummate the Amended Plan after entry of this Confirmation Order subject to satisfaction of the conditions precedent to the occurrence of the Effective Date set forth in Section 10.1 of the Amended Plan, or waiver of such conditions pursuant to Section 10.2 of the Amended Plan. The Debtors and the Liquidation Trustee, as applicable, are authorized and directed to execute, acknowledge and deliver such deeds, assignments, conveyances, and other assurances, documents, instruments of transfer, uniform commercial code financing statements, trust agreements, mortgages, indentures, security agreements and bills of sale and to take such other actions as may be reasonably necessary to perform the terms and provisions of the Amended Plan, all transactions contemplated by the Amended Plan, the Plan Supplement and all other agreements and/or documents related thereto.

30. Assumption of Executory Contract 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 parties to such Executory Contracts and Unexpired Leases to be assumed pursuant to the Amended Plan were afforded with good and sufficient notice of such assumption and an opportunity to object and be heard. Except as otherwise provided in this Confirmation Order, any and all objections or reservations of rights in connection with the assumption or an Executory Contract or Unexpired Lease under the Amended Plan, if any, are overruled on their merits.

31. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases. Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Amended Plan shall be satisfied, pursuant to Bankruptcy Code section 365(b)(1), by

payment of the default 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 Bankruptcy Code section 365 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 Bankruptcy Code section 365(b)(1) shall be made following the entry of a Final Order resolving the dispute and approving the assumption. Any counterparty to an Executory Contract or Unexpired Lease that failed to timely object to the proposed assumption or cure amount set forth in the Plan Supplement or the Second Plan Supplement shall be deemed to have consented to such assumption and agreed to the specified cure amount.

32. Rejection of Executory Contracts and Unexpired Leases. On the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected unless such Executory Contract or Unexpired Lease: (a) is listed on the Schedule of Assumed Contracts and Leases, (b) is listed on the Schedule of Contracts and Leases Neither Assumed Nor Rejected, or (c) is otherwise assumed pursuant to the terms of the Amended Plan, *provided, however*, that any Executory Contracts or Unexpired Leases that are the subject of a separate motion to assume or reject under Bankruptcy Code section 365 pending on the Effective Date shall be treated as provided in the Final Order resolving such motion; *provided further, however*, to the fullest extent permitted by applicable law, all indemnification provisions in existence prior to the date on which these chapter 11 cases were filed (whether in the by-laws, certificates of incorporation or formation, limited liability company agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, or otherwise) for any current or former directors, officers, managers, employees, direct and indirect sponsors, shareholders, direct

and indirect affiliates, attorneys, accountants, investment bankers, or other professionals of the Debtors, as applicable, shall be reinstated, assumed, and remain intact and irrevocable and shall survive the Effective Date.

33. Claims Based on Rejection of Executory Contracts or Unexpired Leases. All Claims arising from the rejection of Executory Contracts or Unexpired Leases pursuant to the Amended Plan or this Confirmation Order must be filed with the Claims Agent according to the procedures established for the filing of proof of claim or before thirty (30) days after notice of entry of this Confirmation Order.

34. Dissolution of the Debtors. The Liquidation Trustee is 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, if any. For the avoidance of doubt, subject to making any Plan Distributions to holders of Allowed General Unsecured Claims on the Initial Distribution Date, and all payments to the Indenture Trustees pursuant to paragraph 21 herein, once all assets of a Debtor have been transferred to the Liquidation Trust or the Liquidation Trustee, as applicable, the Liquidation Trustee is authorized to take all necessary steps to dissolve such Debtor.

35. 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 these chapter 11 cases; *provided, however,* that the foregoing shall not apply to any matters concerning any (i) Fee Claims held or asserted by any Professional Persons retained by the Committee; (ii) Allowed

Claims held by any member of the Committee; or (iii) Indenture Trustees' fees, costs and expenses provided for in Section 5.14 of the Amended Plan and paragraph 23 herein.

36. Securities Matters. Notwithstanding any language to the contrary contained in the Disclosure Statement, the Amended Plan, and/or this Confirmation Order, no provision of the Disclosure Statement, Amended Plan, or Confirmation Order shall (a) preclude the Securities and Exchange Commission from enforcing its police or regulatory powers or (b) release any non-debtor from liability in connection with any legal or equitable action or claim brought by the Securities and Exchange Commission.

37. Environmental Protection Agency. Nothing in this Order or the Plan releases, discharges, precludes, or enjoins: (i) any liability under environmental law to any governmental unit as defined in 11 U.S.C. § 101(27) ("Governmental Unit") that is not a "claim" as defined in 11 U.S.C. § 101(5); (ii) any environmental Claim of a Governmental Unit arising on or after the Confirmation Date; (iii) any environmental liability to a Governmental Unit that any entity is subject to as the owner or operator of property after the Confirmation Date; provided, however, that nothing in this clause (iii) shall be construed to deny a discharge, release, or preclusion of any Claim with respect to such real property for any costs incurred, expended, or paid by a Governmental Unit before the Effective Date or any penalties or fines owing for any days of alleged violations of environmental laws or regulations before the Effective Date; or (iv) any liability to a Governmental Unit on the part of any Person other than the Debtors, or Liquidation Trust. Nor shall anything in this Order or the Plan enjoin or otherwise bar a Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence. Nothing in this Order or the Plan shall (i) affect any setoff or recoupment rights of any Governmental Unit, or (ii) limit, diminish, or otherwise alter the Debtors' (or any successor in interest's) defenses, claims, causes of action, or other rights under applicable non-bankruptcy

law with respect to any environmental liability to Governmental Units at owned or operated sites.

38. Texas Comptroller of Public Accounts. Notwithstanding anything else to the contrary in the Plan or this Confirmation Order, these provisions will govern the treatment of the claims of the Texas Comptroller of Public Accounts (the "Texas Comptroller"): (1) nothing provided in the Plan or this Confirmation Order shall affect or impair any statutory or common law setoff rights of the Texas Comptroller in accordance with 11 U.S.C. § 553; (2) nothing provided in the Plan or this Confirmation Order shall affect or impair any rights of the Texas Comptroller under applicable non-bankruptcy law to pursue any non-debtor third parties for tax debts or claims; (3) nothing provided in the Plan or this Confirmation Order shall be construed to preclude the payment of interest on the Texas Comptroller's administrative expense or priority tax claims; provided that nothing shall prohibit the Debtors or any successor in interest (including the Liquidation Trustee) from contesting any claim asserted by the Texas Comptroller, including without limitation, the validity, amount, classification and/or priority of the claim and whether payment of interest is appropriate; and (4) to the extent that interest is payable with respect to any administrative expense or priority tax claim of the Texas Comptroller, the interest rate shall be 4.5% per annum.

39. Internal Revenue Service. Notwithstanding any provision to the contrary in the Amended Plan, this Confirmation Order, and Plan Documents, nothing shall: (1) affect the ability of the Internal Revenue Service ("IRS") to pursue any non-Debtors to the extent allowed by non-bankruptcy law for any liabilities that may be related to any federal tax liabilities owed by the Debtors or the Debtors' Estates; (2) affect the rights of the United States to assert setoff and recoupment and such rights are expressly preserved; (3) require the IRS to file an administrative claim to receive payment for any liability described in Bankruptcy Code section

503(b)(1)(B) and (C); (4) expand the scope of Bankruptcy Code Section 505; or (5) preclude the IRS from amending any pre-petition or post-petition Claim without first seeking Bankruptcy Court authorization. Priority Tax Claims shall be paid in full in Cash on the Effective Date or as soon as practicable thereafter, and to the extent the Priority Tax Claims (including any penalties, interest or additions to tax entitled to priority under the Bankruptcy Code), if any, are not paid on the Effective Date, the Priority Tax Claims shall accrue interest commencing on the Effective Date at the rate and method set forth in 26 U.S.C. Sections 6621 and 6622. IRS Administrative Expense Claims allowed pursuant to the Plan or Bankruptcy Code section 503 shall accrue interest and penalties as provided by non-bankruptcy law until paid in full. Moreover, notwithstanding any provision to the contrary in the Plan Documents, the Debtors and the Liquidation Trustee agree that: (a) the IRS will not be bound by any characterizations, for tax purposes, of any transaction as set forth in the Plan Documents; (b) the IRS shall not be bound by any characterizations, for tax purposes, of any valuation of any property as set forth in the Plan Documents and (c) they shall comply with the provisions of the Internal Revenue Code. Additionally, nothing in the Plan Documents shall: (a) be construed as a compromise or settlement of any IRS Claim or interest; (b) effect a release, discharge or otherwise preclude any Claim whatsoever against any Debtor by or on behalf of the IRS for any liability arising out of pre-petition or post-petition tax periods for which a required return has not been filed or as a result of a pending audit or audit that may be performed with respect to any pre-petition tax or post-petition tax return; and (c) nothing shall enjoin the IRS from amending any proof of claim against any Debtor with respect to any tax liability arising out of pre-petition or post-petition tax periods for which a required tax return has not been filed or from a pending audit or audit that may be performed with respect to any pre-petition or post-petition tax return. Further, except as provided elsewhere in this paragraph, any liability arising out of pre-petition or post-petition tax

periods for which a required return has not been filed or as a result of a pending audit or audit that may be performed with respect to any pre-petition tax or post-petition tax return shall be paid in accordance with Bankruptcy Code section 1129(a)(9)(A) and (C).

40. Department of Interior. Notwithstanding any provision in the Amended Plan, this Confirmation Order or the Plan Documents, with respect to any interests in contracts, leases, covenants, operating rights agreements, rights-of-use and easement, and rights-of-way or other interests or agreements with the federal government (collectively, the "Federal Leases") or involving (i) federal land or minerals or (ii) lands or minerals held in trust for federally-recognized Indian tribes or Indian individuals (collectively, "Indian Landowners") or held by such Indian Landowners in fee with federal restriction on alienation (collectively, "Indian Land"), the Debtors and the Liquidation Trustee and any purchaser will comply with all applicable non-bankruptcy law and nothing in the Amended Plan, this Confirmation Order, or the Plan Documents shall be construed as a compromise or settlement of any Claim or interest with respect to the Federal Leases. Without limiting the foregoing, nothing in the Amended Plan, this Confirmation Order, or the Plan Documents shall: (i) be interpreted to set cure amounts for Federal Leases or to require the United States or Indian Landowners to novate or otherwise consent to the transfer of any Federal Leases; (ii) otherwise affect any decommissioning obligations and financial assurance requirements under the Federal Leases, as determined by the United States and any applicable Indian Landowner that must be met by the Debtors, the Liquidation Trustee or any purchaser; (iii) affect the United States' or Indian Landowners' right to assert, against the Debtors and the Debtors' Estates, any decommissioning liability and/or Claim arising from the Debtors' interest in any Federal Leases not assumed by the Debtors; or (iv) prohibit the United States or the Indian Landowners from amending their Claims without first seeking Bankruptcy Court approval. The United States' and Indian Landowners' rights to



offset or recoup any amounts due under, or relating to any Federal Leases are expressly preserved.

41. 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 these chapter 11 cases or the Amended Plan pursuant to, and for purposes of, Bankruptcy Code sections 105(a) and 1142, including, without limitation, jurisdiction to:

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

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

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

(d) resolve any matters related to: (i) 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; (ii) any potential contractual obligation under any assumed Executory Contract or Unexpired Lease; and (iii) any dispute regarding whether a contract or lease is or was an Executory Contract or Unexpired Lease, as applicable;

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

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

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

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

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

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

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

(l) 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;

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

(n) resolve any Disputed Claims;

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

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

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

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

(s) 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;

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

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

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

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

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

(y) enter a final decree closing these chapter 11 cases.

Dated: August 16, 2016  
Wilmington, Delaware

  
THE HONORABLE LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**

**(The Amended Plan)**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

_____	)	
In re:	)	Chapter 11
	)	
Quicksilver Resources Inc., <u>et al.</u> , <sup>1</sup>	)	Case No. 15-10585 (LSS)
	)	
Debtors.	)	Jointly Administered
_____	)	

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**FIRST AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION FOR  
QUICKSILVER RESOURCES INC. AND ITS AFFILIATED DEBTORS**

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Dated: July 5, 2016

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Quicksilver Resources Inc. [6163]; Barnett Shale Operating LLC [0257]; Cowtown Drilling, Inc. [8899]; Cowtown Gas Processing L.P. [1404]; Cowtown Pipeline Funding, Inc. [9774]; Cowtown Pipeline L.P. [9769]; Cowtown Pipeline Management, Inc. [9771]; Makarios Resources International Holdings LLC [1765]; Makarios Resources International Inc. [7612]; QPP Holdings LLC [0057]; QPP Parent LLC [8748]; Quicksilver Production Partners GP LLC [2701]; Quicksilver Production Partners LP [9129]; and Silver Stream Pipeline Company LLC [9384]. The Debtors' address is 801 Cherry Street, Suite 4000, Fort Worth, Texas 76102.

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## INTRODUCTION<sup>2</sup>

Quicksilver Resources Inc. and the other debtors and debtors in possession in the above-captioned cases propose the following first amended 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, financial projections, risk factors, a summary and analysis of the Plan, and certain related matters including, among other things, certain tax matters, and the securities and other consideration to be issued and distributed under the Plan. Subject to certain restrictions and requirements set forth in Bankruptcy Code section 1127, Bankruptcy Rule 3019, and Sections 13.2 and 13.3 of the Plan, the Debtors reserve the right, in consultation with the Consultation Parties, 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 Class 4 and Class 5. 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 Bankruptcy Code section 503(b)(9).

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

**1.1.3** “*2019 Senior Notes*” means those certain 9<sup>1</sup>/<sub>8</sub>% Senior Notes due 2019 issued pursuant to the 2019 Senior Notes Indenture.

**1.1.4** “*2019 Senior Notes Indenture*” means that certain Indenture, dated as of December 22, 2005, by and among QRI and U.S. Bank National Association as Successor Trustee, as amended and supplemented from time to time, including by the Twenty-Fifth Supplemental Indenture, dated as of March 16, 2015.

**1.1.5** “*2021 Senior Notes*” means those certain 11.000% Senior Notes due 2021 issued pursuant to the 2021 Senior Notes Indenture.

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<sup>2</sup> All capitalized terms used but not defined in this Introduction have the meanings set forth in article 1 in the Plan.

**1.1.6** “*2021 Senior Notes Indenture*” means that certain Indenture, dated as of June 21, 2013, by and among QRI, the Subsidiary Guarantors from time to time party thereto, and the Delaware Trust Company as Successor Trustee, as amended, supplemented, restated, or modified from time to time.

**1.1.7** “*Ad Hoc Group of Second Lienholders*” means the ad hoc group of certain (i) holders of Second Lien Notes and (ii) lenders under the Second Lien Term Loan represented by Milbank, Tweed, Hadley & McCloy LLP and set forth in the *Third Supplemental Verified Statement Pursuant to Bankruptcy Rule 2019* filed with the Bankruptcy Court by the Ad Hoc Second Lien Noteholder Group January 6, 2016 [D.I. 1024] (as may be further amended, supplemented or modified from time to time).

**1.1.8** “*Adequate Protection Claims*” means Claims equal to any unpaid Cash payments required to be made pursuant to the Cash Collateral Order.

**1.1.9** “*Administrative Bar Date*” means the date that is forty-five (45) days after the Effective Date.

**1.1.10** “*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 Bankruptcy Code section 503(b) and entitled to priority pursuant to Bankruptcy Code sections 328, 330, 363, 364(c)(1), 365, 503(b), 507(a)(2), or 507(b) (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.

**1.1.11** “*Agents*” means the First Lien Agent and the Second Lien Agent.

**1.1.12** “*Allowed Claim or Allowed \_\_\_\_\_ Claim*” (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.

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

**1.1.14** “*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware, or any other court exercising competent jurisdiction over the Chapter 11 Cases or any proceeding therein.

**1.1.15** “*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 Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

**1.1.16** “*Bar Date*” means any deadline for filing proofs of Claim, as established by an order of the Bankruptcy Court, including the *Order Establishing Deadlines and Procedures for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [D.I. 417], or under the Plan.

**1.1.17** “*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).

**1.1.18** “*Canadian Credit Facility*” means that certain Amended and Restated Canadian Credit Agreement, dated as of December 22, 2011, as amended, supplemented, restated, or modified to date.

**1.1.19** “*Canadian Note*” means that certain Amended and Restated Global Intercompany Note, dated October 7, 2011, by and among QRI, QRCI, Cowtown Pipeline Funding, Inc., Cowtown Pipeline Management, Inc., Cowtown Pipeline L.P., and Cowtown Gas Processing L.P., as supplemented by (x) that certain Letter Agreement by and between QRI and QRCI, evidencing an advance of \$243,620,034.64 in U.S. dollars made by QRI to QRCI on or about October 8, 2010; (y) that certain Letter Agreement by and between QRI and QRCI evidencing an advance of \$147,102,822.38 in U.S. dollars made by QRI to QRCI on or about May 1, 2013; and (z) that certain Letter Agreement by and between QRI and QRCI evidencing an advance of \$22,559,104.85 in U.S. dollars made by QRI to QRCI on or about March 11, 2014.

**1.1.20** “*Canadian Proceeds*” means any Cash received on account of (i) the Canadian Note, and (ii) the Debtors’ equity interests in QRCI and its subsidiaries.

**1.1.21** “*Cash*” means the legal currency of the United States and equivalents thereof.

**1.1.22** “*Cash Collateral Order*” means the *Final Order Under 11 U.S.C. §§ 105, 361, 362, 363 and 507 and Bankruptcy Rules 2002, 4001 and 9014 (I) Authorizing Debtors To Use Cash Collateral and (II) Granting Adequate Protection to Prepetition Secured Parties* [D.I. 307] entered by the Bankruptcy Court on May 1, 2015, as modified, supplemented, amended, or extended.

**1.1.23** “*Causes of Action*” means any and all actions, causes of action (including causes of action under Bankruptcy Code sections 510, 544, 545, 546, 547, 548, 549, 550, and 553), 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.

**1.1.24** “*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 Quicksilver Resources Inc., et al.*, Case No. 15-10585 (LSS).

**1.1.25** “*Charging Lien*” means any Lien or other priority in payment arising prior to the Effective Date to which any Indenture Trustee is entitled, pursuant to its respective Indenture, against Plan Distributions to be made to holders of Allowed Senior Notes Claims or Allowed Subordinated Notes Claims, as applicable, for payment of any of such Indenture Trustee’s respective fees, costs, and expenses, which Lien or other priority in payment shall be deemed a separate right of such Indenture Trustee arising under the Plan.

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

**1.1.27** “*Claims Agent*” means the Garden City Group, 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).

**1.1.28** “*Claims Register*” means the official register of Claims against the Debtors maintained by the Claims Agent.

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

**1.1.30** “*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.

**1.1.31** “*Committee*” means the statutory committee of unsecured creditors appointed in the Chapter 11 Cases in accordance with Bankruptcy Code section 1102, which consists of (a) U.S. Bank National Association, (b) the Delaware Trust Company, (c) Wilmington Trust, National Association, (d) Ares Special Situations Fund IV, L.P.; and (e) Trunkline Gas Company LLC.

**1.1.32** “*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.

**1.1.33** “*Confirmation Date*” means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Debtors’ Chapter 11 Cases.

**1.1.34** “*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.

**1.1.35** “*Confirmation Order*” means an order entered by the Bankruptcy Court, in form and substance reasonably acceptable to the Debtors and the Consultation Parties, confirming the Plan, including all exhibits, appendices, supplements, and related documents.

**1.1.36** “*Consultation Parties*” means the First Lien Agent, the Second Lien Agent, Ad Hoc Group of Second Lienholders, and the Committee.

**1.1.37** “*Debt Documents*” means, collectively, the First Lien Facility, the Second Lien Term Loan, the Second Lien Notes Indenture, the 2019 Senior Notes Indenture, the 2021 Senior Notes Indenture, and the Subordinated Notes Indenture.

**1.1.38** “*Debtor(s)*” means, individually or collectively, as the context requires: (a) Quicksilver Resources Inc.; (b) Barnett Shale Operating LLC; (c) Cowtown Drilling, Inc.; (d) Cowtown Gas Processing L.P.; (e) Cowtown Pipeline Funding, Inc.; (f) Cowtown Pipeline L.P.; (g) Cowtown Pipeline Management, Inc.; (h) Makarios Resources International Holdings LLC; (i) Makarios Resources International Inc.; (j) QPP Holdings LLC; (k) QPP Parent LLC; (l) Quicksilver Production Partners GP LLC; (m) Quicksilver Production Partners LP; and (n) Silver Stream Pipeline Company LLC.

**1.1.39** “*Debtor Release*” means the release given on behalf of the Debtors and their Estates to the Released Parties as set forth in Section 11.3 hereof.

**1.1.40** “*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.

**1.1.41** “*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, the Agents, and the Indenture Trustees (subject to an acceptable agreement with the Liquidation Trustee).

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

**1.1.43** “*Disclosure Statement Order*” means an order of the Bankruptcy Court approving the Disclosure Statement as having adequate information in accordance with Bankruptcy Code section 1125.

**1.1.44** “*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.

**1.1.45** “*Distribution Date*” means the Initial Distribution Date or any of the Periodic Distribution Dates, as applicable.

**1.1.46** “*Distribution Record Date*” means, with respect to all Classes for which Plan Distributions are to be made, the third (3<sup>rd</sup>) Business Day after the Confirmation Date or such other later date as shall be established by the Bankruptcy Court in the Confirmation Order.

**1.1.47** “*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 (1<sup>st</sup>) Business Day on which all of the conditions set forth in Section 10.1 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 and the Consultation Parties in accordance with the Plan, fourteen (14) days after the Confirmation Date.

**1.1.48** “*Estate*” means each estate created in the Chapter 11 Cases pursuant to Bankruptcy Code section 541.

**1.1.49** “*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, 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.

**1.1.50** “*Exculpated Party*” means, collectively, the Debtors, each of the Debtors’ current and former officers and directors that served in such capacities between the Petition Date and the Effective Date, 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.

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

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

**1.1.53** “*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 Bankruptcy Code section 502(j) shall not render a Final Order not a Final Order.

**1.1.54** “*First Lien Agent*” means JP Morgan Chase Bank, N.A., in its capacity as administrative agent, or any successor agent under the First Lien Facility.

**1.1.55** “*First Lien Facility*” means, collectively, the U.S. Credit Facility and the Canadian Credit Facility.

**1.1.56** “*First Lien Lender*” means each lender under the First Lien Facility.

**1.1.57** “*First Lien Claims*” means the Claims, inclusive of principal, fees and interest accrued through the Effective Date, of the First Lien Lenders arising under the First Lien Facility.

**1.1.58** “*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, (c) Claims arising out of the rejection of Executory Contracts and Unexpired Leases by any Debtor, (d) Senior Notes Claims, and (e) Second Lien Deficiency Claims, but excluding any Subordinated Notes Claim or Intercompany Claim.

**1.1.59** “*Impaired*” means impaired within the meaning of Bankruptcy Code section 1124.

**1.1.60** “*Indentures*” means the Second Lien Notes Indenture, the 2019 Senior Notes Indenture, the 2021 Senior Notes Indenture, and the Subordinated Notes Indenture.

**1.1.61** “*Indenture Trustees*” means, collectively, the Second Lien Indenture Trustee and the acting indenture trustees for the 2019 Senior Notes Indenture, the 2021 Senior Notes Indenture, and the Subordinated Notes Indenture, and any successor to any of the foregoing.

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

**1.1.63** “*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.

**1.1.64** “*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.

**1.1.65** “*Interest*” means the interest (whether legal, equitable, contractual, or otherwise) of any holders of any 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.

**1.1.66** “*Investment Account Cash*” means the approximately \$167.5 million of Cash and Cash equivalents, as of the Petition Date, previously borrowed under the U.S. Credit Facility and that was deposited in certain depository accounts as of the Petition Date.

**1.1.67** “*Lien*” has the meaning set forth in Bankruptcy Code section 101(37).

**1.1.68** “*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.

**1.1.69** “*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 included in the Plan Supplement.

**1.1.70** “*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 property and assets of the Debtors remaining after segregation of the Cash component of the Unsecured Plan Consideration, including Canadian Proceeds that are payable to the holders of Allowed General Unsecured Claims, reserving for Fee Claims, and payment of Administrative Expense Claims, U.S. Trustee Fees, Priority Tax Claims, Other Priority Claims, Other Secured Claims, First Liens Claims (if applicable), the Cash component of the Second Lien Plan Consideration, including Canadian Proceeds that are payable to the holders of Allowed Second Lien Secured Claims. For the avoidance of doubt, from and after the Effective Date, the Liquidation Trust shall be vested with the right to receive Canadian Proceeds, which amounts shall be distributed in accordance with the terms of this Plan and the Liquidation Trust Agreement.

**1.1.71** “*Liquidation Trust Beneficiaries*” means the holders of the Liquidation Trust Interests.

**1.1.72** “*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, but excluding any and all Causes of Action released and/or exculpated pursuant to the terms of the Plan.

**1.1.73** “*Liquidation Trust Interests*” means the uncertified beneficial interests in the Liquidation Trust representing the right of each holder of an Allowed Second Lien Secured 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.

**1.1.74** “*Liquidation Trust Reserve*” means, as more fully described in the Liquidation Trust Agreement, the Cash transferred to the Liquidation Trust on the Effective Date out of the Cash that would otherwise be payable to the holders of Allowed Second Lien Secured Claims as part of the Second Lien Plan Consideration to fund the initial operations of the Liquidation Trust.

**1.1.75** “*Liquidation Trustee*” means the person or firm to be appointed to manage the Liquidation Trust pursuant to Section 9.4 of the Plan and the Liquidation Trust Agreement.

**1.1.76** “*Non-Intercompany Interest*” means any Interest in a Debtor that is not an Intercompany Interest.

**1.1.77** “*Notes*” means the Second Lien Notes, the 2019 Senior Notes, the 2021 Senior Notes, and the Subordinated Notes.

**1.1.78** “*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 Bankruptcy Code section 507(a).

**1.1.79** “*Other Secured Claim*” means any Secured Claim against a Debtor that is not a First Lien Claim, a Second Lien Secured Claim, an Adequate Protection Claim, or a Second Lien Diminution Claim.

**1.1.80** “*Periodic Distribution Date*” means, unless otherwise ordered by the Bankruptcy Court, the first Business Day that is ninety (90) days after the Initial Distribution Date, and thereafter, the first Business Day that is ninety (90) days after the immediately preceding Periodic Distribution Date until liquidation of the Liquidation Trust Assets is complete.

**1.1.81** “*Person*” shall have the meaning set forth in Bankruptcy Code section 101(41).

**1.1.82** “*Petition Date*” means March 17, 2015.

**1.1.83** “*Plan*” means the first amended 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.

**1.1.84** “*Plan Distributions*” means the distributions to be made under the Plan to holders of Allowed Claims.

**1.1.85** “*Plan Documents*” means the documents, other than the Plan, which shall be reasonably acceptable to the Consultation Parties, 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.

**1.1.86** “*Plan Supplement*” means the supplemental appendix to the Plan, which shall be reasonably acceptable to the Consultation Parties, to be filed no later than ten (10) 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) the Schedule of Assumed Contracts and Leases, and (iii) additional documents filed with the Bankruptcy Court before the Effective Date as amendments to the Plan Supplement.

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

**1.1.88** “*Professional Person(s)*” means all Persons retained by order of the Bankruptcy Court in connection with the Chapter 11 Cases, pursuant to Bankruptcy Code sections 327, 328, 330 or 1103, excluding any ordinary course professionals.

**1.1.89** “*QRCP*” means non-Debtor Quicksilver Resources Canada Inc.

**1.1.90** “*QRI*” means Quicksilver Resources Inc.

**1.1.91** “*Released Parties*” means, collectively, in each case solely in their capacity as such: (a) (1) each Debtor and (2) each of their respective current and former employees, agents, officers, directors, managers, trustees, members, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants; (b) the Committee and each of its members, (c) each First Lien Lender, (d) each Second Lien Lender, (e) each Second Lien Noteholder, (f) the Ad Hoc Group of Second Lienholders and each of its members, (g) each Agent, (h) each of the Indenture Trustees, and (i) with respect to each entity in section (b) through (h), each of their respective current and former predecessors, successors, and assigns, current and former shareholders, affiliates, subsidiaries, principals, employees, agents, officers, directors, managers, trustees, partners, members, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants.

**1.1.92** “*Releasing Parties*” means each of the following in its capacity as such: (a) each Released Party; (b) all holders of Claims against a Debtor who vote to accept the Plan; (c) all holders of Claims against a Debtor who are entitled to vote to accept the Plan and who do not vote; (d) all holders of Claims against a Debtor who are deemed to accept the Plan; and (e) all holders of Claims against a Debtor who vote to reject the Plan and who do not opt out of the release provided by the Plan.

**1.1.93** “*Sale Proceeds*” means net proceeds from the sale of substantially all of the Debtors’ assets to BlueStone Natural Resources II, LLC pursuant to that certain *Order Approving the Sale of the Debtors Oil and Gas Assets* [D.I. 1095] entered by the Bankruptcy Court on January 27, 2016.

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

**1.1.95** “*Schedule of Contracts and Leases Neither Assumed Nor Rejected*” means a schedule of Executory Contracts and Unexpired Leases that will neither be assumed nor rejected pursuant to sections 365 and 1123 and Article 8.1 of the Plan and shall remain unaffected, which shall be included in the Plan Supplement.

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

**1.1.97** “*Second Lien Agent*” means Credit Suisse AG, Cayman Islands Branch (f/k/a Credit Suisse AG), in its capacity as administrative agent, or any successor agent under the Second Lien Term Loan.

**1.1.98** “*Second Lien Claims*” means the Second Lien Deficiency Claims and the Second Lien Secured Claims.

**1.1.99** “*Second Lien Deficiency Claims*” means any deficiency Claims held by the Second Lien Lenders or Second Lien Noteholders.

**1.1.100** “*Second Lien Diminution Claims*” means the aggregate post-petition diminution in value of the applicable Second Lien Lender’s, the Second Lien Agent’s, the Second Lien Indenture Trustee’s, or the Second Lien Noteholder’s interest in Collateral under the Second Lien Term Loan or Second Lien Notes Indenture resulting from the sale, lease or use by the Debtors (or other decline in value) of that Collateral and the imposition of the automatic stay pursuant to Bankruptcy Code section 362.

**1.1.101** “*Second Lien Lender*” means each lender under the Second Lien Term Loan.

**1.1.102** “*Second Lien Noteholders*” means the holders of Second Lien Notes under the Second Lien Notes Indenture.

**1.1.103** “*Second Lien Notes*” means the Second Lien Senior Secured Floating Rate Notes Due 2019.

**1.1.104** “*Second Lien Notes Indenture*” means that certain Indenture, dated as of June 21, 2013, as amended, supplemented, restated, or modified to date, by and among the Debtors, Bank of New York Mellon Trust Company, N.A., as Trustee and Second Lien Collateral Agent, and the holders of Second Lien Notes.

**1.1.105** “*Second Lien Indenture Trustee*” means The Bank of New York Mellon Trust Company N.A., in its capacity as indenture trustee and collateral agent under the Second Lien Notes Indenture.

**1.1.106** “*Second Lien Plan Consideration*” means (i) all Cash on hand as of the Effective Date, including, without limitation, the Sale Proceeds and Investment Account Cash, but only that Cash that remains after (w) establishment of the reserve for Fee Claims contemplated by Section 2.3.1 of this Plan, (x) payment of Allowed Administrative Expense Claims, U.S. Trustee Fees, Allowed Priority Tax Claims, Allowed Other Priority Claims, Allowed Other Secured Claims, and Allowed First Liens Claims (if applicable), (y) segregation of the Unsecured Plan Consideration, including the \$17.5 million Cash component and any Canadian Proceeds that are payable to the holders of Allowed General Unsecured Claims, and (z) transfer of the Liquidation Trust Reserve; (ii) one-hundred percent (100%) of the first \$2.5 million of recoveries from the Canadian Proceeds, (iii) fifty percent (50%) of recoveries from the Canadian Proceeds in excess of \$2.5 million up to \$17.5 million of recoveries from the Canadian Proceeds; (iv) one-hundred percent (100%) of recoveries from the Canadian Proceeds in excess of \$17.5 million; and (v) the Liquidation Trust Interests. Recoveries on account of Canadian

Proceeds payable to the holders of Allowed Second Lien Claims that are received after the Effective Date shall be distributed on the first Distribution Date after the receipt of such funds.

**1.1.107** “*Second Lien Secured Claims*” means the Secured Claims, inclusive of principal, fees, and interest, if applicable, accrued through the Effective Date, held by (i) the Second Lien Lenders, and (ii) the holders of Second Lien Notes.

**1.1.108** “*Second Lien Term Loan*” means that certain Second Lien Credit Agreement, dated as of June 21, 2013, as amended, supplemented, restated, or modified to date.

**1.1.109** “*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 Bankruptcy Code section 553.

**1.1.110** “*Senior Notes*” means the 2019 Senior Notes and the 2021 Senior Notes.

**1.1.111** “*Senior Notes Claims*” means all Claims against any Debtor arising from or based upon the Senior Notes, including accrued, unpaid prepetition interest, costs, and fees.

**1.1.112** “*Subordinated Notes*” means those certain 7<sup>1</sup>/<sub>8</sub>% Senior Subordinated Notes due 2016 issued pursuant to the Subordinated Notes Indenture.

**1.1.113** “*Subordinated Notes Claims*” means all Claims against any Debtor arising from or based upon the Subordinated Notes, including accrued, unpaid prepetition interest, costs, and fees.

**1.1.114** “*Subordinated Notes Indenture*” means that certain Indenture, dated as of December 22, 2005, by and among QRI and U.S. Bank National Association, as Successor Trustee, as amended and supplemented from time to time, including by that certain First Supplemental Indenture, dated as of March 16, 2006, by and among QRI, the Subsidiary Guarantors parties thereto, and Wilmington Trust, National Association, as Successor Trustee, and that certain Twenty-Fifth Supplemental Indenture, dated as of March 16, 2015, by and among QRI, the Subsidiary Guarantors parties thereto, The Bank of New York Mellon Trust Company, N.A., as Resigning Trustee, U.S. Bank National Association, as First Successor Trustee and Wilmington Trust, National Association, as Second Successor Trustee.

**1.1.115** “*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.

**1.1.116** “*Tax Code*” means the Internal Revenue Code of 1986, as amended.

**1.1.117** “*Third-Party Release*” means the release provision set forth in Section 11.4 hereof.

**1.1.118** “*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 Bankruptcy Code sections 365 and 1123.

**1.1.119** “*Unimpaired*” means, with respect to a Class of Claims, a Class of Claims that is not Impaired.

**1.1.120** “*Unsecured Plan Consideration*” means (i) \$17.5 million in Cash, plus (ii) 50% of recoveries from the Canadian Proceeds in excess of \$2.5 million up to \$17.5 million of recoveries from the Canadian Proceeds. On the Effective Date or, in the case of recoveries from the Canadian Proceeds, as soon thereafter as is reasonably practicable, the Unsecured Plan Consideration shall be transferred to, or received by, the Liquidation Trustee. The Liquidation Trustee shall hold such funds in a segregated account for the benefit of holders of Allowed General Unsecured Claims and make distributions therefrom consistent with the Plan and the Liquidation Trust Agreement.

**1.1.121** “*U.S. Credit Facility*” means that certain Amended and Restated Credit Agreement, dated as of December 22, 2011, as amended, supplemented, restated, or modified to date.

**1.1.122** “*U.S. Trustee*” means the Acting United States Trustee, Region 3.

**1.1.123** “*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.

## **1.2 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 Bankruptcy Code section 102 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 <http://cases.gcginc.com/kwk>, or may obtain a copy of the Plan Documents by a request to the Claims Agent as follows:

Quicksilver Resources Inc., et al.  
c/o GCG  
P.O. Box 10155  
Dublin, OH 43017-3155

Toll-Free: (877) 940-2410  
Email: KWKinfo@gcginc.com

## ARTICLE 2.

### UNCLASSIFIED CLAIMS

#### 2.1 Administrative Expense Claims.

##### 2.1.1 *Payment of Administrative Expense Claims.*

Except to the extent that a holder of an Allowed Administrative Expense Claim agrees to a less favorable treatment, on the first Distribution Date after such Claim becomes an Allowed Claim, in full satisfaction, settlement, and release of, and in exchange for such Claim, each Allowed Administrative Expense Claim shall receive payment of such Administrative Expense Claim in full in Cash; *provided, however*, that Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by any of the Debtors shall be paid by the applicable Debtor or the Liquidation Trust in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to the conditions of any orders or agreements governing, instruments evidencing, or other documents relating to, such liabilities.

##### 2.1.2 *Bar Date for Administrative Expense Claims.*

Requests for payment of an Administrative Expense Claim, other than:

- (a) a Fee Claim;
- (b) a 503(b)(9) Claim;
- (c) an Administrative Expense Claim that has become an Allowed Administrative Expense Claim on or before the Effective Date;
- (d) an Administrative Expense Claim for an expense or liability incurred and paid on or before the Effective Date in the ordinary course of business by a Debtor;
- (e) an Administrative Expense Claim on account of fees and expenses incurred on or after the Petition Date by ordinary course professionals retained by the Debtors pursuant to an order of the Bankruptcy Court;
- (f) an Administrative Expense Claim arising out of the employment by one or more Debtors of an individual in the ordinary course of business from and after the Petition Date, but only to the extent that such Administrative



Expense Claim is solely for outstanding wages, commissions, accrued benefits, or reimbursement of business expenses; or

(g) an Adequate Protection Claim.

must be filed with the Bankruptcy Court and served on the Debtors or the Liquidation Trustee by the Administrative Bar Date. Such request for payment of an Administrative Expense Claim must include, at a minimum: (i) the name of the holder of the Administrative Expense Claim; (ii) the asserted amount of the Administrative Expense Claim; (iii) the name of the applicable Debtor that is purported to be liable for the Administrative Expense Claim and, if the Administrative Expense Claim is asserted against more than one Debtor, the exact amount asserted to be owed by each such Debtor; (iv) the basis of the Administrative Expense Claim; and (v) supporting documentation for the Administrative Expense Claim. **HOLDERS OF ADMINISTRATIVE EXPENSE CLAIMS THAT FAIL TO FILE AND SERVE A REQUEST FOR PAYMENT OF AN ADMINISTRATIVE EXPENSE CLAIM BY THE ADMINISTRATIVE BAR DATE SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH ADMINISTRATIVE EXPENSE CLAIM AGAINST THE DEBTORS OR THEIR PROPERTY AND SUCH ADMINISTRATIVE EXPENSE CLAIMS SHALL BE DISALLOWED IN FULL AS OF THE EFFECTIVE DATE.** Objections, if any, to a timely request for payment of Administrative Expense Claims must be filed and served on the Liquidation Trustee and the requesting party no later than ninety (90) days after the Administrative Bar Date.

## **2.2 Adequate Protection Claims.**

Pursuant to the Cash Collateral Order, and except as otherwise set forth in this Plan, all Adequate Protection Claims will be paid in the ordinary course of business (subject to the terms of the Cash Collateral Order), but no later than the Effective Date; *provided, however*, that such fees, costs and expenses must be reimbursable under the terms of the applicable Debt Document; *provided, further*, that the applicable Agent, Indenture Trustee, or professional will receive payment in the ordinary course of business (subject to the Liquidation Trustee's prior receipt of invoices and reasonable documentation in connection therewith) for all reasonable fees, costs, and expenses incurred after the Effective Date in connection with the implementation of any provisions of the Plan. In the event of a dispute with respect to all or a portion of an Adequate Protection Claim, the Debtors shall pay the undisputed amount of such Adequate Protection Claim, and reserve Cash in the amount of the remaining portion of such Adequate Protection Claim until such dispute is resolved by the parties or by the Bankruptcy Court.

## **2.3 Fee Claims.**

### **2.3.1 Payment of Fee Claims.**

All Professional Persons seeking allowance by the Bankruptcy Court of a Fee Claim shall be paid in full in Cash in such amounts as are approved by the Bankruptcy Court upon (i) the later of (x) the Effective Date, and (y) fourteen (14) days after the date upon which the order relating to the allowance of any such Fee Claim is entered, or (ii) such other terms as may be mutually agreed upon between the holder of such Fee Claim and the Debtors or the Liquidation Trustee, as

applicable. On the Effective Date, to the extent known, the Liquidation Trustee shall reserve Cash in an amount equal to all accrued but unpaid Fee Claims as of the Effective Date, which Cash shall be disbursed solely to the holders of Allowed Fee Claims with the remainder to be reserved until all Fee Claims either have been determined to be Allowed Claims and paid in full or Disallowed by Final Order, at which time any remaining reserved Cash shall become the sole and exclusive property of the Liquidation Trust.

### **2.3.2 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 forty-five (45) days after the Effective Date; *provided, however*, that the Liquidation Trustee shall pay retained professionals or other entities 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 sixty-five (65) days after the Effective Date.

### **2.4 Priority Tax Claims.**

Except to the extent that the Debtors or the Liquidation Trustee, as applicable, and the holder of an Allowed Priority Tax Claim otherwise agree, on the first Distribution Date after such Claim becomes an Allowed Claim, in full satisfaction, settlement, and release of, and in exchange for such Claim, each holder of an Allowed Priority Tax Claim shall receive, in the Debtors' or Liquidation Trustee's discretion, as applicable, on account of such Claim: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim; or (b) deferred Cash payments following the Effective Date over a period ending not later than five (5) years after the Petition Date, in an aggregate amount equal to the amount of such Allowed Priority Tax Claim. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Allowed Claim shall be paid in full in Cash in the ordinary course of business in accordance with the terms of any agreement between the Liquidation Trustee and the holder of such Allowed Claim or otherwise in accordance with applicable non-bankruptcy law.

### **2.5 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 Bankruptcy Code section 1122, 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 Bankruptcy Code section 1123(a)(1), Administrative Expense Claims, U.S. Trustee Fees, and Priority Tax Claims have not been classified.

<b>Class</b>	<b>Claims</b>	<b>Status</b>	<b>Voting Rights</b>
Class 1	Other Priority Claims	Unimpaired	Presumed to Accept
Class 2	Other Secured Claims	Unimpaired	Presumed to Accept
Class 3	First Lien Claims	Unimpaired	Presumed to Accept
Class 4	Second Lien Secured Claims	Impaired	Entitled to Vote
Class 5	General Unsecured Claims	Impaired	Entitled to Vote
Class 6	Subordinated Notes Claims	Impaired	Entitled to Vote
Class 7	510 Claims	Impaired	Presumed to Reject
Class 8	Intercompany Interests	Impaired	Presumed to Reject
Class 9	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 agrees to a less favorable treatment, on the first Distribution Date after such Claim becomes an Allowed Claim, in full satisfaction, settlement, and release of, and in exchange for such Claim, each holder of an Allowed Other Priority Claim shall receive payment of such Allowed Claim in full in Cash.

(c) *Voting:* Class 1 is Unimpaired and the holders of Allowed Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f). Therefore, holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan.

#### **3.3.2 Class 2—Other Secured Claims.**

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

(b) *Treatment:* Except to the extent that a holder of an Allowed Other Secured Claim agrees to a less favorable treatment, on the first Distribution Date after such Claim becomes an Allowed Claim, in full satisfaction, settlement, and release of, and in exchange for such Claim, each holder of an Allowed Other Secured Claim shall receive one of the following treatments, determined at the option of the Debtors or the Liquidation Trustee, as applicable: (i) payment in full in Cash, including interest, to the extent applicable; (ii) delivery of the Collateral securing such Allowed Other Secured Claim to the holder of such Claim; 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.

(c) *Voting:* Class 2 is Unimpaired and the holders of Allowed Other Secured Claims are conclusively presumed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f). Therefore, holders of Allowed Other Secured Claims are not entitled to vote to accept or reject the Plan.

#### **3.3.3 Class 3—First Lien Claims.**

(a) *Classification:* Class 3 consists of the First Lien Claims.

(b) *Treatment:* On the Initial Distribution Date, to the extent not already satisfied, in full satisfaction, settlement, and release of, and in exchange for each First Lien Claim, each holder of an Allowed First Lien Claim shall receive payment in full in Cash. For the avoidance of doubt, and to the extent not already satisfied, the First Lien Claims are Allowed Claims.

(c) *Voting:* Class 3 is Unimpaired and the holders of Allowed First Lien Claims are conclusively presumed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f). Therefore, holders of Allowed First Lien Claims are not entitled to vote to accept or reject the Plan.

**3.3.4 Class 4—Second Lien Secured Claims.**

*Classification:* Class 4 consists of the Second Lien Secured Claims.

(a) The Second Lien Secured Claims shall be Allowed in an aggregate amount equal to \$149,149,078 and shall not be subject to any avoidance, reductions, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, crossclaims, defenses, disallowance, impairment, objection, or any other challenges under any applicable law or regulation by any person or entity.

(b) *Treatment:* On the Initial Distribution Date, in full satisfaction, settlement, and release of, and in exchange for its respective Second Lien Secured Claim, Adequate Protection Claim, and Second Lien Diminution Claim,<sup>3</sup> each holder of an Allowed Second Lien Secured Claim shall receive its *pro rata* share of the Second Lien Plan Consideration.

(c) *Voting:* Class 4 is Impaired and the holders of Allowed Second Lien Secured Claims are entitled to vote to accept or reject the Plan.

**3.3.5 Class 5—General Unsecured Claims.**

(a) *Classification:* Class 5 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, on the first Distribution Date after such Claim becomes an Allowed Claim, 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 the Unsecured Plan Consideration, subject to any applicable Charging Lien.

(c) *Settlement:* As part of the global settlement resolving the claims of and against the holders of Second Lien Claims, the holders of Second Lien Claims agree that they will not receive any distribution on account of their Allowed Second Lien Deficiency Claims (including any turnover from the holders of Subordinated Notes Claims).

(d) *Voting:* Class 5 is Impaired and the holders of Allowed General Unsecured Claims are entitled to vote to accept or reject the Plan.

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<sup>3</sup> The Second Lien Deficiency Claims, Second Lien Adequate Protection Claims, and Second Lien Diminution Claims are being resolved as part of a global settlement under Bankruptcy Rule 9019 set forth herein.

**3.3.6 Class 6—Subordinated Notes Claims.**

(a) *Classification:* Class 6 consists of all Subordinated Notes Claims.

(b) *Treatment:* In full satisfaction, settlement, and release of, and in exchange for such Claim, each holder of an Allowed Subordinated Notes Claim shall receive its *pro rata* share of the Unsecured Plan Consideration; *provided, however,* that in accordance with the Subordinated Notes Indenture, the Plan Distributions otherwise intended for holders of Allowed Subordinated Notes Claims shall be distributed, subject to any applicable Charging Lien, on a *pro rata* basis to those holders of Allowed Claims entitled to the benefit of subordination under the Subordinated Notes Indenture, including those holders of “Senior Indebtedness” (as defined in the Subordinated Notes Indenture) of QRI and the Subsidiary Guarantors (as defined in the Subordinated Notes Indenture) parties thereto, until such Allowed Claims entitled to the benefit of subordination have been satisfied in full (inclusive of interest thereon).

(c) *Settlement:* As part of the global settlement resolving the claims of and against the holders of Second Lien Claims, the holders of Second Lien Claims agree that they will not receive any distribution on account of their Allowed Second Lien Deficiency Claims (including any turnover from the holders of Subordinated Notes Claims).

(d) *Voting:* Class 6 is Impaired and the holders of Allowed Subordinated Notes Claims are entitled to vote to accept or reject the Plan.

**3.3.7 Class 7—510 Claims.**

(a) *Classification:* Class 7 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 7 is Impaired and the holders of 510 Claims are conclusively deemed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g). Therefore, holders of 510 Claims are not entitled to vote to accept or reject the Plan.

**3.3.8 Class 8—Intercompany Interests.**

(a) *Classification:* Class 8 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 8 is Impaired and the holders of Intercompany Interests are conclusively deemed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g). Therefore, holders of Intercompany Interests are not entitled to vote to accept or reject the Plan.

**3.3.9 Class 9—Non-Intercompany Interests.**

(a) *Classification*: Class 9 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 9 is Impaired and the holders of Non-Intercompany Interests are conclusively deemed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g). 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 4, 5, and 6 are Impaired and are entitled to vote to accept or reject the Plan. By operation of law, Classes 1, 2, and 3 are Unimpaired and are deemed to have accepted the Plan and, therefore, are not entitled to vote. By operation of law, Classes 7, 8, and 9 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 Bankruptcy Code sections 1129(a)(8) and (10). 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 Bankruptcy Code section 1126(e), (a) the holders of at least two-thirds (2/3) 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 (1/2) 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 Bankruptcy Code section 1129(a)(8).

#### **4.5 Deemed Acceptance If No Votes Cast.**

If no holders of Claims or Interests eligible to vote in a particular Class vote to accept or reject the Plan, the Plan shall be deemed accepted by the holders of Claims or Interests in such Class.

#### **4.6 Confirmation Pursuant to Bankruptcy Code 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 Bankruptcy Code section 1129(b) with respect to such Classes. Subject to Sections 13.2 and 13.3 of the Plan, the Debtors reserve the right, in consultation with the Consultation Parties, (i) to alter, amend, modify, revoke, or withdraw the Plan or any Plan Document to satisfy the requirements of Bankruptcy Code section 1129(b), 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 the Debtors' board 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, the applicable Debtor or the Liquidation Trustee, as applicable, will take all necessary steps to dissolve such Debtor.

#### **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 Trust under the Plan and the Liquidation Trust Agreement have been taken, the Liquidation Trust 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.

#### **5.3 Plan Funding.**

The Plan Distributions to be made in Cash under the terms of the Plan shall be funded from: the Debtors' Cash on hand, including but not limited to (a) the Investment Account Cash, and (b) the Sale Proceeds.

#### **5.4 Settlement of Intercompany Matters.**

On the Effective Date, pursuant to Bankruptcy Code section 1123(b)(3)(A) and Bankruptcy Rule 9019, each Debtor and their respective successors and assigns hereby waives and releases each other and all of their 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.

#### **5.5 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 to the Liquidation Trust Beneficiaries in accordance with the Plan. 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.

#### **5.6 Books and Records.**

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

#### **5.7 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.

### **5.8 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, within 120 days after the Effective Date, 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 Bankruptcy Code section 505(b) 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.

### **5.9 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. Notwithstanding the foregoing, each of the Indentures shall continue in effect solely for the purposes of, as applicable: (a) allowing holders of Allowed Class 4 and Class 5 Claims to receive distributions under the Plan; (b) allowing holders of Allowed Class 5 Claims to enforce the subordination provisions in the Subordinated Notes Indenture against holders of Allowed Class 6 Claims; and (c) allowing and preserving the rights of the Indenture Trustees to (i) make distributions in satisfaction of Allowed Class 4 and 5 Claims, (ii) maintain and exercise their respective Charging Liens against holders of Allowed Senior Notes Claims and Allowed Subordinated Notes Claims, as applicable, and distributions thereto, (iii) seek compensation and reimbursement for any reasonable and documented fees and expenses incurred in making such distributions, (iv) maintain and enforce any right to indemnification, expense reimbursement, contribution, or subrogation or any other claim or entitlement that the Indenture Trustees may have under the applicable Indentures, (v) exercise their rights and obligations relating to the interests of their holders pursuant to the applicable Indentures, and (vi) appear in these Chapter 11 Cases. For the avoidance of doubt, all indemnification obligations and expense reimbursement obligations of the Debtors arising under the Indentures in favor of the Indenture Trustees, and each of their respective directors, officers, employees, agents, affiliates, controlling persons, and legal and financial advisors, shall survive, remain in full force and effect, and be enforceable against the Debtors or their Estates on and after the Effective Date and shall be enforceable through the exercise of the applicable Charging Lien against the holders of Allowed Senior Notes Claims and Allowed Subordinated Notes Claims, as applicable, and distributions thereto.

### **5.10 Surrender of Cancelled Instruments or Securities.**

As a condition precedent to receiving any distribution on account of its Allowed Claim, each record holder of Second Lien Notes, Senior Notes or Subordinated Notes shall be deemed to have surrendered the certificates or other documentation underlying each such Claim, and all such surrendered certificates and other documentation shall be deemed to be cancelled pursuant to this Section 5.10 except as otherwise provided herein. The Indenture Trustees may (but shall not be required to) request that registered holders of Second Lien Notes, Senior Notes or Subordinated Notes surrender their notes for cancellation to the extent such notes are certificated. Except to the extent necessary to facilitate distributions, subsequent to the performance by the Indenture Trustees or their respective agents of any duties that are required under the Plan and the Confirmation Order, the Indenture Trustees and their respective agents (i) shall be fully relieved of, and released from, all obligations associated with the Notes arising under the Indentures or under any other applicable agreements or law and (ii) shall be deemed to be fully discharged.

### **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, which shall in no way affect the rights and obligations of the insureds under the "tail" directors and officers insurance coverage purchased pre-petition.

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

**5.12.1** The Debtors or the Liquidation Trustee, subject to the terms of the Liquidation 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. The secretary of each Debtor or the Liquidation 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 Bankruptcy Code section 1146(a), 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.

For the avoidance of doubt, the settlements under Bankruptcy Rule 9019 embodied herein and approved through entry of the Confirmation Order include the compromise and settlement of all Claims and controversies by and among the Committee, the Indenture Trustees, the Second Lien Agent, the Second Lien Lenders, and the Second Lien Noteholders. More specifically, the settlement among these parties fully settles all of the outstanding issues between the Committee, the Second Lien Agent, the Indenture Trustees, the Second Lien Lenders, and the Second Lien Noteholders in these Chapter 11 Cases, including, without limitation, the calculation of the Adequate Protection Claims, the Second Lien Diminution Claims, the allocation of proceeds from all sales of the Debtors' assets, and all remaining counts asserted by the Committee in its adversary proceeding. Pursuant to the settlement, all matters among these parties will be finally and fully resolved and all litigation related thereto will be dismissed with prejudice.

### **5.14 Settlement of Indenture Trustees' Fees.**

In settlement of the above referenced claims, including without limitation claims among the Indenture Trustees, on the Effective Date, and without the filing of corresponding fee applications with the Bankruptcy Court, any reasonable and documented fees, costs, and expenses incurred by the Indenture Trustees (other than the Second Lien Indenture Trustee) and their professionals on or prior to the Effective Date shall be paid by the Estate in Cash up to the

amount of \$400,000, with any excess amount to be paid in full to each of the Indenture Trustees (other than the Second Lien Indenture Trustee) from the Unsecured Plan Consideration pursuant to any applicable Charging Lien; *provided, however*, that to receive payment on the Effective Date, the Indenture Trustees (other than the Second Lien Indenture Trustee) shall provide the Debtors with the invoices, as applicable, in no particular format (redacted to remove confidential or privileged information) for which it seeks payment within ten (10) business days prior to the Effective Date. To the extent that the Debtors object in writing prior to the expiration of the ten (10) business day payment period to any of the fees, costs, or expenses of the Indenture Trustees (other than the Second Lien Indenture Trustee) set forth in such invoices, the Debtors (i) shall pay the undisputed portion of such amounts and (ii) shall not be required to pay any disputed portion of such amounts until a resolution of such objection is agreed to by the Debtors and the applicable Indenture Trustee or upon a further order by the Bankruptcy Court upon a motion by the applicable Indenture Trustee; *provided* that, notwithstanding the foregoing, such Indenture Trustee shall be entitled to assert its Charging Lien against holders of Allowed Senior Notes Claims and Allowed Subordinated Notes Claims, as applicable, and distributions thereto, to pay the disputed portion of its fees, costs, or expenses. Nothing herein shall be deemed to impair, waive, or negatively impact any Charging Lien to which the Indenture Trustees (other than the Second Lien Indenture Trustee) may be entitled. Reasonable and documented fees, costs, and expenses of the Indenture Trustees related to the implementation of the Plan, including, without limitation, all reasonable fees, costs, and expenses incurred by the Indenture Trustees in making Plan Distributions, that are incurred after the Effective Date will be paid in full in Cash by the Liquidation Trustee from the Unsecured Plan Consideration in a timely manner without the need for further court approval.

## 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 (other than Administrative Expense Claims) shall be served and filed on or before the later of: (a) the date that is 180 days after the Effective Date; and (b) such other date as may be fixed by the Bankruptcy Court. 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** After the Confirmation Date, but 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 Bankruptcy Code section 502(c), 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 Bankruptcy Code section 502(j), in no event shall any holder of a Claim that has been estimated pursuant to Bankruptcy Code section 502(c) 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 fourteen (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 shall make initial distributions under the Plan on account of Claims that are Allowed Claims as of the Effective Date on the Initial Distribution Date.

**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, 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 thirty (30) days after the Disputed Claim becomes an Allowed Claim.

**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 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, (i) the Claims Register and (ii) the transfer books and records of the Notes as maintained by the Indenture Trustees or their respective agents shall be closed and there shall be no further changes in the record holders of any Claims or Interests. The Debtors, the Disbursing Agent, and the Indenture Trustees 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 or the appropriate Indenture Trustee 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 *Distributions on Account of Claims Administered by Indenture Trustees or Agent; Delivery of Plan Distributions to Indenture Trustees.***

In the case of holders of Claims whose Claims are governed by an agreement and administered by an Indenture Trustee or Agent, the respective Indenture Trustee or Agent shall be deemed to be the holder of such Claims for purposes of Plan Distributions to be made hereunder. The Disbursing Agent shall make all distributions on account of such Claims to the Indenture Trustees or Agents. Each Indenture Trustee and Agent shall, at its option, hold or direct such Plan Distributions for the holders of record of such Allowed Claims who hold on behalf of the beneficial holders, as applicable, in accordance with the Plan; *provided, however*, that each Indenture Trustee or Agent shall retain all rights under its respective agreement in connection with delivery of such Plan Distributions, including, without limitation, the right of each Indenture Trustee to assert its Charging Lien against such holders and Plan Distributions thereto; *provided, further*, that the Debtors' and the Liquidation Trustee's obligations to make Plan Distributions pursuant to the Plan shall be deemed satisfied upon delivery of Plan Distributions to each Indenture Trustee or Agent. The Indenture Trustees or Agents shall not be required to give any bond, surety, or other security for the performance of their duties with respect to such distributions.

**7.4.4 *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.

**7.4.5 *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.

**7.4.6 *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 Bankruptcy Code section 347(b) and forfeited at the expiration of the later of six (6) 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.

#### **7.4.7 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 (6) 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 fourteen (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 fourteen-day (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 11 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, the Cash Collateral 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 Bankruptcy Code sections 365 and 1123 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 Bankruptcy Code sections 365 and 1123 as of the Effective Date, unless any such Executory Contract or Unexpired Lease: (a) is listed on the Schedule of Assumed Contracts and Leases, (b) is listed on the Schedule of Contracts and Leases Neither Assumed Nor Rejected, or (c) 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 Bankruptcy Code section 365 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 Bankruptcy Code sections 365 and 1123 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 Bankruptcy Code section 503; *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) thirty (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 3.3.5 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 Bankruptcy Code section 365(b)(1), by payment of the default 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 Bankruptcy Code section 365 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 Bankruptcy Code section 365(b)(1) shall be made following the entry of a Final Order resolving the dispute and approving the assumption.

**8.4.2** No later than twenty (20) 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 (10) 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. 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 Bankruptcy Code sections 1123 and 1141 and pursuant to the terms of the Plan, all 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 Bankruptcy Code section 553, 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 Bankruptcy Code section 1146(a). 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 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 that is reasonably acceptable to the Consultation Parties. 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 monetize the 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. 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 7.4.6 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 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 5.7 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 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** 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, 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 (5) years from the Effective Date unless the Bankruptcy Court determines that a fixed period extension (not to exceed two (2) 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.

### **CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN**

#### **10.1 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 pursuant to the provisions of Section 10.2 of the Plan:

**10.1.1** The Disclosure Statement Order shall have been entered, become a Final Order, and remain in full force and effect;

**10.1.2** The Confirmation Order shall have been entered, become a Final Order, and remain in full force and effect;

**10.1.3** 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;

**10.1.4** 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; and

**10.1.5** 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.

**10.1.6** The Debtors shall have paid all undisputed fees, costs, expenses, and disbursements due on or before the Effective Date under Section 5.14 of the Plan in full and in Cash (subject to the provisions of Section 5.14, including the Debtors' prior receipt of invoices and objection rights thereunder); *provided* that the Debtors shall have no obligation to pay any amount in excess of the amount specified in Section 5.14.

#### **10.2 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 10.1 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.

### **10.3 Effect of Non-Occurrence of Conditions to the Effective Date.**

Unless the Debtors, the Committee, and the Second Lien Parties agree otherwise, if the Effective Date does not occur on or before sixty (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 10.3, 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 11.**

### **EFFECT OF CONFIRMATION**

#### **11.1 Binding Effect.**

Except as otherwise provided in Bankruptcy Code section 1141(d)(3) 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.

#### **11.2 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 Bankruptcy Code sections 105 or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

#### **11.3 Debtor Release.**

**11.3.1** Upon the Effective Date of the Plan, for good and valuable consideration, the adequacy of which is hereby confirmed, pursuant to Bankruptcy Code section 1123(b) and to the fullest extent permitted by applicable law, the Debtors, their Estates and any Person (including the Liquidation Trustee) seeking to exercise the rights of the Debtors or the Debtors' Estates, including, without limitation, any successor to the Debtors or the Debtors' Estates or any Estate representative appointed or selected pursuant to Bankruptcy Code section 1123(b)(3) (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) seeking to exercise the rights of the Debtors or the Debtors' Estates, including without limitation, 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.

**11.3.2** Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor 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 Debtor 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 Debtor 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 Debtors or their Estates asserting any Claim or Cause of Action released pursuant to the Debtor Release.

#### **11.4 Third-Party Release.**

**11.4.1** 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 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.

11.4.2 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.

#### 11.5 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.

#### 11.6 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 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 or the Liquidation 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 Bankruptcy Code section 553 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 12.

### 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, Bankruptcy Code sections 105(a) and 1142, including, without limitation, jurisdiction to:

**12.1.1** 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;

**12.1.2** 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;

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

**12.1.4** 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;

**12.1.5** ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

**12.1.6** 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;

**12.1.7** 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;

**12.1.8** 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;

**12.1.9** 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;

**12.1.10** 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;

**12.1.11** resolve any ambiguities between the Liquidation Trust Agreement and the Plan;

**12.1.12** 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;

**12.1.13** resolve any matters related to the Liquidation Trust;

**12.1.14** resolve any Disputed Claims;

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

**12.1.16** recover all assets of the Debtors and property of the Debtors' Estates wherever located;



**12.1.17** hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 346, 505, and 1146;

**12.1.18** 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;

**12.1.19** 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;

**12.1.20** 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;

**12.1.21** adjudicate any and all disputes arising from or relating to Plan Distributions;

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

**12.1.23** enforce all orders previously entered by the Bankruptcy Court;

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

**12.1.25** enter a final decree closing the Chapter 11 Cases.

## ARTICLE 13.

### MISCELLANEOUS PROVISIONS

#### **13.1 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.

#### **13.2 Modification of Plan.**

The Debtors reserve the right, in consultation with the Consultation Parties, 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 or the Liquidation Trustee, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan in accordance with Bankruptcy Code section 1127(b) 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.

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

The Debtors reserve the right, in consultation with the Consultation Parties, 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.

### **13.4 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.

### **13.5 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.

### **13.6 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.

### **13.7 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.

### **13.8 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.

### **13.9 Exhibits.**

All exhibits to the Plan are incorporated and are a part of the Plan as if set forth in full in the Plan.

### **13.10 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:

**QUICKSILVER RESOURCES INC.**  
801 Cherry St., Suite 3700, Unit 19  
Fort Worth, TX 76102  
Attn: Glenn Darden, CEO and Vanessa Gomez LaGatta, CFO

-and-

Counsel to the Debtors

**AKIN GUMP STRAUSS HAUER & FELD LLP**  
Charles R. Gibbs (admitted *pro hac vice*)  
Sarah Link Schultz (admitted *pro hac vice*)  
1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201  
Telephone: (214) 969-2800

Facsimile: (214) 969-4343

**13.11 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: July 5, 2016  
Wilmington, Delaware

Respectfully submitted,

Quicksilver Resources Inc.  
on behalf of itself and its affiliated Debtors

By: /s/ Vanessa Gomez LaGatta  
Vanessa Gomez LaGatta  
Senior Vice President, Chief Financial Officer,  
and Treasurer

**RICHARDS, LAYTON & FINGER, P.A.**

Paul N. Heath (DE 3704)  
Amanda R. Steele (DE 5530)  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

- and -

**AKIN GUMP STRAUSS HAUER & FELD LLP**

Charles R. Gibbs (admitted *pro hac vice*)  
Sarah Link Schultz (admitted *pro hac vice*)  
Travis A. McRoberts (DE 5274)  
1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201  
Telephone: (214) 969-2800  
Facsimile: (214) 969-4343

**Exhibit B**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
Quicksilver Resources Inc., <u>et al.</u> , <sup>1</sup>	)	Case No. 15-10585 (LSS)
Debtors.	)	Jointly Administered
	)	

**NOTICE OF (I) ENTRY OF CONFIRMATION ORDER AND (II) EFFECTIVE DATE**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. An order (the “Confirmation Order”) of the Honorable Laurie Selber Silverstein, United States Bankruptcy Judge for the District of Delaware, confirming and approving the *First Amended Joint Chapter 11 Plan of Liquidation for Quicksilver Resources Inc. and its Affiliated Debtors* [Docket No. 1525] (including all exhibits thereto and as the same may be amended, modified or supplemented from time to time, the “Plan”)² was entered on August \_\_, 2016 [Docket No. \_\_].

2. All conditions precedent to the Effective Date pursuant to Article 10 of the Plan have been satisfied or waived. Therefore, today, \_\_, 2016, is the Effective Date of the Plan.

3. The Plan and its provisions are binding on, among others, the Debtors, all holders of Claims and Interests (irrespective of whether such Claims or Interests are impaired under the Plan or whether the holders of such Claims or Interests have accepted the Plan), and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors, as provided in the Plan.

4. Any holder of a Claim arising from the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan must file a proof of Claim with the Bankruptcy Court and serve such proof of Claim on the Debtors no later than \_\_, 2016. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease pursuant to Section 8.2 of the Plan for which proofs of Claim are not timely filed within that time period will be forever barred from assertion against the Debtors, the Estates, their successors and assigns, and their assets and properties, unless otherwise ordered by the Bankruptcy Court or as otherwise provided in the Plan.**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Quicksilver Resources Inc. [6163]; Barnett Shale Operating LLC [0257]; Cowtown Drilling, Inc. [8899]; Cowtown Gas Processing L.P. [1404]; Cowtown Pipeline Funding, Inc. [9774]; Cowtown Pipeline L.P. [9769]; Cowtown Pipeline Management, Inc. [9771]; Makarios Resources International Holdings LLC [1765]; Makarios Resources International Inc. [7612]; QPP Holdings LLC [0057]; QPP Parent LLC [8748]; Quicksilver Production Partners GP LLC [2701]; Quicksilver Production Partners LP [9129]; and Silver Stream Pipeline Company LLC [9384]. The Debtors’ address is 801 Cherry Street, Suite 4000, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Plan.

5. The Administrative Bar Date is \_\_\_\_, 2016. Except as otherwise provided in the Plan or the Confirmation Order, each holder of an Administrative Expense Claim (to the extent such holder has not previously been paid and other than those Claims specifically provided for in Section 2.1.2 of the Plan) must file with the Bankruptcy Court a request for payment of such Administrative Expense Claim no later than the Administrative Bar Date. **Any holder of an Administrative Expense Claim that is required to file a request for payment of such Administrative Expense Claim that does not file such request with the Bankruptcy Court by the Administrative Bar Date, shall be forever barred, estopped, and enjoined from asserting such Administrative Expense Claim against the Debtors, and such Administrative Expense Claim shall be deemed released and discharged as of the Effective Date.**

6. 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 no later than \_\_\_\_, 2016 (the “Fee Claim Bar Date”). Subject to the provisions of Bankruptcy Code sections 328, 330(a), and 331, the Liquidation Trust shall pay each holder of an Allowed Fee Claim the full unpaid amount of such Allowed Fee Claim in Cash no later than fourteen (14) days after the date that such Claim is Allowed by order entered by the Bankruptcy Court. **Any Fee Claim not filed by the Fee Claim Bar Date (or such later date as may be agreed upon by the Liquidation Trustee) in accordance with Section 2.3 shall be deemed disallowed under the Plan and shall be forever barred against the Estates, the Liquidation Trust, or any of the Liquidation Trust Assets or property, and the holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset, recoup or recover such Claim.**

7. Copies of the Confirmation Order, the Plan and the Plan Supplement shall be available for inspection (i) at the Office of the Clerk of the Bankruptcy Court, (ii) at <http://www.pacer.gov>, or (iii) from the Claims Agent’s website at <http://cases.gcginc.com/kwk>.



Wilmington, Delaware  
Date: \_\_\_\_\_, 2016

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**RICHARDS, LAYTON & FINGER, P.A.**

Paul N. Heath (DE 3704)  
Amanda R. Steele (DE 5530)  
Rachel L. Biblo (DE 6012)  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

– and –

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Charles R. Gibbs (admitted *pro hac vice*)  
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Travis A. McRoberts (DE 5274)  
1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201  
Telephone: (214) 969-2800  
Facsimile: (214) 969-4343

**COUNSEL FOR DEBTORS AND DEBTORS IN  
POSSESSION**

**EXHIBIT B**

**Blackline**

**BLACKLINE**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
Quicksilver Resources Inc., <u>et al.</u> , <sup>1</sup>	)	Case No. 15-10585 (LSS)
Debtors.	)	Jointly Administered
	)	<a href="#"><u>Re: Docket No. 1525</u></a>

**ORDER CONFIRMING FIRST AMENDED JOINT CHAPTER  
11 PLAN OF LIQUIDATION FOR QUICKSILVER  
RESOURCES INC. AND ITS AFFILIATED DEBTORS**

A HEARING HAVING BEEN HELD BY THE COURT on August 15, 2016 (the “Confirmation Hearing”), to consider confirmation of the *First Amended Joint Chapter 11 Plan of Liquidation for Quicksilver Resources Inc. and its Affiliated Debtors*, the solicitation version of which was dated July 5, 2016 [Docket No. 1525],<sup>2</sup> and a final version of which is attached hereto as Exhibit A (the “Amended Plan”), proposed by Quicksilver Resources Inc. and its affiliated debtors and debtors in possession (collectively, the “Debtors”);

THE COURT NOTING that the *Disclosure Statement for First Amended Joint Chapter 11 Plan of Liquidation for Quicksilver Resources Inc. and its Affiliated Debtors*, the solicitation version of which is dated July 5, 2016 [Docket No. 1526] (the “Disclosure Statement”), has been previously approved by the Court, pursuant to the *Order Approving the Disclosure Statement, Voting Procedures, and Confirmation Procedures* [Docket No. 1505], entered on June 29, 2016 (the “Disclosure Statement Order”);

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Quicksilver Resources Inc. [6163]; Barnett Shale Operating LLC [0257]; Cowtown Drilling, Inc. [8899]; Cowtown Gas Processing L.P. [1404]; Cowtown Pipeline Funding, Inc. [9774]; Cowtown Pipeline L.P. [9769]; Cowtown Pipeline Management, Inc. [9771]; Makarios Resources International Holdings LLC [1765]; Makarios Resources International Inc. [7612]; QPP Holdings LLC [0057]; QPP Parent LLC [8748]; Quicksilver Production Partners GP LLC [2701]; Quicksilver Production Partners LP [9129]; and Silver Stream Pipeline Company LLC [9384]. The Debtors’ address is 801 Cherry Street, Suite 4000, Fort Worth, Texas 76102.

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Disclosure Statement or the Plan, as applicable.

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IT APPEARING TO THE COURT that the Court-approved solicitation and noticing procedures have been followed as set forth in the *Declaration of Craig E. Johnson of Garden City Group, LLC, Certifying the Methodology for the Tabulation of Votes and Results of Voting with Respect to the First Amended Joint Chapter 11 Plan of Liquidation of Quicksilver Resources Inc. and Its Affiliated Debtors*, dated August 9, 2016 [Docket No. 1602] (the “Voting Certification”); an affidavit of service having been executed by Garden City Group, LLC with respect to the mailing of notice of the Confirmation Hearing and solicitation materials in accordance with the Disclosure Statement Order (the “Affidavit of Service”) and having been filed with the Court on July 11, 2016 [Docket No. 1541]; and the affidavits of publication of the *Confirmation Hearing Notice* (the “Affidavits of Publication”) in *The New York Times* and *Star-Telegram* in accordance with the Disclosure Statement Order having been filed with the Court on July 12, 2016 [Docket Nos. 1549 & 1550];

IT FURTHER APPEARING TO THE COURT that the Debtors have filed with the Court (a) the Plan Supplement dated July 26, 2016 [Docket No. 1580] (as amended or modified from time to time, the “Plan Supplement”) containing the (i) the Liquidation Trust Agreement; (ii) the Schedule of Assumed Contracts and Leases; (iii) the Schedule of Contracts and Leases Neither Assumed Nor Rejected; and (iv) Identification of the Liquidation Trustee and (b) the Second Notice of Filing of Plan Supplement Documents dated August 11, 2016 [Docket No. 1612] containing a revised version of the Schedule of Assumed Contracts and Leases (the “Second Plan Supplement”);

IT FURTHER APPEARING TO THE COURT that the deadline for casting ballots to accept or reject the Amended Plan has passed and that the results of voting have been certified by Garden City Group, LLC, acting as balloting and solicitation agent, as set forth in the Voting Certification;

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IT FURTHER APPEARING TO THE COURT that (i) the Debtors have filed the *Declaration of Vanessa Gomez LaGatta in Support of the Debtors' Memorandum of Law in Support of Confirmation and Omnibus Reply to Objections to Confirmation of the First Amended Joint Chapter 11 Plan for Quicksilver Resources Inc. and Its Affiliated Debtors*, dated August 9, 2016 [Docket No. 1603] (the "LaGatta Declaration"), (ii) the Debtors have filed the *Declaration of Adam Dunayer in Support of Debtors' Memorandum of Law in Support of Confirmation and Omnibus Reply to Objections to Confirmation of the First Amended Joint Chapter 11 Plan for Quicksilver Resources Inc. and its Affiliated Debtors*, dated August 9, 2016 [Docket No. 1604] (the "Dunayer Declaration"), (iii) the Debtors have presented testimony, evidence and argument of counsel in support of confirmation of the Amended Plan, and (iv) other parties in interest have had the opportunity to present additional testimony, evidence or argument of counsel;

NOW, THEREFORE, based upon the Court's review of (i) the Disclosure Statement, (ii) the Amended Plan, (iii) the Plan Supplement, (iv) the Second Plan Supplement, (v) the LaGatta Declaration, (vi) the Dunayer Declaration, (vii) the Voting Certification, (viii) the Affidavits of Publication, and (ix) all of the evidence proffered or adduced at, filings in connection with, and arguments of counsel made at, the Confirmation Hearing; and after due deliberation thereon and good cause appearing therefor, and all objections to the Amended Plan having been overruled or withdrawn, and for the reasons set forth on the record at the Confirmation Hearing,

IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>

A. Jurisdiction; Venue; Core Proceeding. The Court has jurisdiction over these chapter 11 cases pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C.

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<sup>3</sup> The findings of fact and the conclusions of law stated in this Confirmation Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the proceeding by Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

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§§ 1408 and 1409. Confirmation of the Amended Plan is a core proceeding pursuant to 28 U.S.C. § 157(b) upon which this Court may issue a final order, and confirmation of a plan by this Court is a constitutional exercise of the jurisdiction conferred by Congress on this Court. This Court has exclusive jurisdiction to determine whether the Amended Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

B. Transmittal and Mailing of Solicitation Materials and Notices. The solicitation materials and notices prescribed by the Disclosure Statement Order were served in compliance with the Disclosure Statement Order, and such service was appropriate and sufficient. Appropriate and sufficient notice of the Confirmation Hearing and the other deadlines and matters required to be noticed pursuant to the Disclosure Statement Order was given in compliance with the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order, and no other or further notice is or shall be required.

C. Adequacy of Solicitation Procedures. All procedures used to distribute the solicitation materials to the appropriate creditors entitled to vote on the Amended Plan and to tabulate the ballots returned by creditors were fair and were conducted in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order. Votes for acceptance or rejection of the Amended Plan were solicited and cast in good faith, and only after transmittal of the approved Disclosure Statement, and otherwise in compliance with Bankruptcy Code sections 1125 and 1126 and Bankruptcy Rules 3017 and 3018.

D. Good Faith Solicitation -- 11 U.S.C. § 1125(e). The Debtors and their Professional Persons have acted in good faith within the meaning of Bankruptcy Code sections 1125(e) and 1129(a)(3), and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order in connection with all of their

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respective activities relating to the solicitation of acceptances of the Amended Plan and their participation in the activities described in Bankruptcy Code section 1125, and are entitled to the protections afforded by Bankruptcy Code section 1125(e) and, to the extent applicable, the release, exculpation and injunctive provisions set forth in Sections 11.3, 11.4, 11.5 and 11.6 of the Amended Plan.

E. *Impaired Class that Has Voted to Accept or Reject the Plan.* Classes 4, 5 and 6 are Impaired under and entitled to vote on the Amended Plan. As evidenced by the Voting Certification, which certified both the method and results of the voting, Classes 4 and 5 have voted to accept the Amended Plan pursuant to the requirements of Bankruptcy Code section 1124 and 1126. Further, as evidenced by the Voting Certification, Class 6 has voted to reject the Amended Plan.

F. *Classes Deemed to Accept Plan.* Classes 1, 2 and 3 are Unimpaired under the Amended Plan. Pursuant to Bankruptcy Code section 1126(f), holders of such Unimpaired Claims are conclusively presumed to have accepted the Amended Plan.

G. *Releases, Exculpation and Injunction.* The release, exculpation and injunction provisions set forth in Sections 11.3, 11.4, 11.5 and 11.6 of the Amended Plan: (i) are within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), 1334(b) and 1334(d); (ii) are an essential means of implementing the Amended Plan pursuant to Bankruptcy Code section 1123(a)(5); (iii) are an integral element of the transactions incorporated into the Amended Plan; (iv) confer material benefits on, and are in the best interests of, the Debtors, their Estates and their creditors; (v) are important to the overall objectives of the Amended Plan to finally resolve all Claims among or against the key parties in interest in these chapter 11 cases with respect to the Debtors; and (vi) are consistent with Bankruptcy Code sections 105, 1123 and 1129, and other applicable provisions of the Bankruptcy Code. With respect to the releases provided by the Debtors in

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Sections 11.3 and 11.4 of the Amended Plan, pursuant to Bankruptcy Rule 9019 and the applicable provisions of the Bankruptcy Code, such releases are approved after due notice and opportunity for hearing. The record of the Confirmation Hearing and these chapter 11 cases is sufficient to support the release, exculpation and injunction provisions contained in the Amended Plan.

H. Plan Compliance with Bankruptcy Code -- 11 U.S.C. § 1129(a)(1). The Amended Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying Bankruptcy Code section 1129(a)(1).

(i) Proper Classification -- 11 U.S.C. §§ 1122, 1123(a)(1). Aside from Administrative Expense Claims, Adequate Protection Claims, Fee Claims, Priority Tax Claims and U.S. Trustee Fees, which need not be classified, the Amended Plan designates nine Classes of Claims and Interests. The Claims and Interests placed in each Class are substantially similar to other Claims and Interests, as the case may be, in each such Class. Valid factual and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Amended Plan, and such Classes do not unfairly discriminate among holders of Claims and Interests. Thus, the Amended Plan satisfies Bankruptcy Code sections 1122 and 1123(a)(1).

(ii) Specify Unimpaired Classes -- 11 U.S.C. § 1123(a)(2). Article III of the Amended Plan specifies that Classes 1, 2 and 3 are Unimpaired under the Amended Plan, thereby satisfying Bankruptcy Code section 1123(a)(2).

(iii) Specify Treatment of Impaired Classes -- 11 U.S.C. § 1123(a)(3). Article III of the Amended Plan specifies that Classes 4, 5, 6, 7, 8 and 9 are Impaired and the treatment of such Claims and Interests in those Classes, thereby satisfying Bankruptcy Code section 1123(a)(3).



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(iv) No Discrimination -- 11 U.S.C. § 1123(a)(4). The Amended Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class unless the holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Equity Interest, thereby satisfying Bankruptcy Code section 1123(a)(4).

(v) Implementation of Plan -- 11 U.S.C. § 1123(a)(5). The Amended Plan provides adequate and proper means for its implementation, thereby satisfying Bankruptcy Code section 1123(a)(5).

(vi) Additional Plan Provisions -- 11 U.S.C. § 1123(b). The Amended Plan's additional provisions are appropriate and not inconsistent with the applicable provisions of the Bankruptcy Code.

- (1) Impairment of Claims and Interests and Assumption and Assignment or Rejection of Executory Contracts or Unexpired Leases - 11 U.S.C. § 1123(b)(1) - (2). Article III of the Amended Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Interests. Article VIII of the Amended Plan provides for the assumption of only the Executory Contracts and Unexpired Leases listed on the Schedule of Assumed Contracts and Leases. Article VIII of the Amended Plan provides for the rejection of all Executory Contracts and Unexpired Leases of the Debtors unless any such Executory Contract and Unexpired Lease: (a) is listed on the Schedule of Assumed Contracts or Leases, (b) is listed on the Schedule of Contracts and Leases Neither Assumed or Rejected, or (c) is otherwise assumed pursuant to the terms of the Amended Plan; *provided, however*, that any Executory Contracts or Unexpired Leases that are subject of a separate motion to assume or reject under Bankruptcy Code section 365 pending on the Effective Date shall be treated as provided in the Final Order resolving such motion; *provided further, however*, to the fullest extent permitted by applicable law, all indemnification provisions in existence prior to the date on which these chapter 11 cases were filed (whether in the by-laws, certificates of incorporation or formation, limited liability company agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, or otherwise) for any current or former directors, officers, managers, employees, direct and indirect sponsors, shareholders, direct and indirect affiliates, attorneys, accountants, investment bankers, or

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other professionals of the Debtors, as applicable, shall be reinstated, assumed, and remain intact and irrevocable and shall survive the Effective Date.

- (2) Retention, Enforcement, and Settlement of Claims - 11 U.S.C. § 1123(b)(3). The Amended Plan incorporates a settlement and compromise of all Claims and controversies by and among the Committee, the Indenture Trustees, the Second Lien Agent, the Second Lien Lenders, and the Second Lien Noteholders. The settlement was negotiated in good faith and at arm's length and is an essential element of the Amended Plan. It is fair, equitable, and in the best interests of the Debtors, the Debtors' Estates, the Debtors' creditors, and all parties in interest, and satisfies the standards for approval under Bankruptcy Rule 9019.

Except as otherwise provided in the Amended Plan, this Confirmation Order, or the Liquidation Trust Agreement after the transfer of the Liquidation Trust Assets, pursuant to Section 9.6.2 of the Amended Plan, 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. Subject to the terms of the Liquidation Trust Agreement, the Liquidation Trustee will 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. Subject to the terms of the Liquidation Trust Agreement, 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. Liquidation Trust Causes of Action may only be prosecuted or settled by the Liquidation Trustee, in its sole discretion, subject to the terms of the Liquidation Trust Agreement.

- (3) Sale of All or Substantially All of the Property of the Estate - 11 U.S.C. § 1123(b)(4). The Amended Plan effectuates the distribution of the Sale Proceeds.
- (4) Modification of Rights of Holders of Claims - 11 U.S.C. § 1123(b)(5). Article III of the Amended Plan modifies or leaves unaffected, as the case may be, the rights of holders of each Class of Claims.
- (5) Other Provisions Not Inconsistent with Applicable Provisions of the Bankruptcy Code; Deemed Consolidated - 11 U.S.C. § 1123(b)(6). The other discretionary provisions of the Amended Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code.

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(vii) Compliance with Fed. R. Bankr. P. 3016. The Amended Plan is dated and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the Court satisfies Bankruptcy Rule 3016(b). Further, the Amended Plan and Disclosure Statement describe in specific and conspicuous language all acts to be enjoined and identify the entities that are subject to the injunction, satisfying Bankruptcy Rule 3016(c) to the extent applicable.

(viii) Compliance with Fed. R. Bankr. P. 3017. The Debtors have given notice of the Confirmation Hearing as required by Bankruptcy Rule 3017(d) and the Disclosure Statement Order. The solicitation materials prescribed by the Disclosure Statement Order were transmitted to the holders of Claims entitled to vote on the Amended Plan in accordance with Bankruptcy Rule 3017(d).

(ix) Compliance with Fed. R. Bankr. P. 3018. The solicitation of votes to accept or reject the Amended Plan satisfies Bankruptcy Rule 3018. The Amended Plan was transmitted to all holders of Claims entitled to vote on the Amended Plan, sufficient time was prescribed for such holders to accept or reject the Amended Plan, and the solicitation materials used and solicitation procedures followed comply with Bankruptcy Code sections 1125 and 1126, thereby satisfying the requirements of Bankruptcy Rule 3018.

I. Compliance with Bankruptcy Code -- 11 U.S.C. § 1129(a)(2). The Amended Plan Proponents have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying Bankruptcy Code section 1129(a)(2).

J. Plan Proposed in Good Faith -- 11 U.S.C. § 1129(a)(3). The Debtors have proposed the Amended Plan in good faith and not by any means forbidden by law, thereby satisfying Bankruptcy Code section 1129(a)(3). In determining that the Amended Plan has been

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proposed in good faith, the Court has examined the totality of the circumstances surrounding the formulation of the Amended Plan. The Debtors filed their chapter 11 cases, and the Amended Plan was proposed, with legitimate and honest purposes including, among other things, maximization of the recovery to creditors under the circumstances of the cases. Furthermore, the Amended Plan reflects and is the result of arm's-length and good-faith negotiations among the Debtors, the Committee and other parties in interest in these chapter 11 cases and is consistent with the best interests of the Debtors' Estates and creditors.

K. Payments for Services or Costs and Expenses -- 11 U.S.C. § 1129(a)(4). To the extent applicable, all payments made or to be made by the Debtors or by a person acquiring property under the Amended Plan, for services or for costs and expenses in or in connection with these chapter 11 cases, or in connection with the Amended Plan and incident to these chapter 11 cases, have been approved by, or are subject to the approval of, the Court as reasonable, thereby satisfying Bankruptcy Code section 1129(a)(4).

L. Director, Officers and Insiders -- 11 U.S.C. § 1129(a)(5). On the Effective Date, the authority, power and incumbency of the persons then acting as directors, officers, managers and other authorized persons of the Debtors shall be terminated and such persons shall be deemed to have resigned. On the Effective Date and in compliance with the provisions of the Amended Plan and the Liquidation Trust Agreement, the Debtors shall appoint a person or firm as Liquidation Trustee that is reasonably acceptable to the Consultation Parties. In the Plan Supplement, the Debtors identified the person that will serve as the initial Liquidation Trustee. This individual is not an insider of the Debtors. At or prior to the Confirming Hearing, the Debtors identified any insider whom the Debtors have or who will be engaged to assist the Liquidation Trustee. The Debtors further believe that the appointment to such office of such

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individuals is consistent with the interests of creditors and equity security holders and with public policy. Therefore, the Amended Plan satisfies Bankruptcy Code section 1129(a)(5).

M. No Rate Changes -- 11 U.S.C. § 1129(a)(6). There is no regulatory commission having jurisdiction after confirmation of the Amended Plan over the rates of the Debtors and no rate change provided for in the Amended Plan requiring approval of any such commission. Therefore, Bankruptcy Code section 1129(a)(6) is not applicable.

N. Best Interests of Creditors -- 11 U.S.C. § 1129(a)(7). The Amended Plan satisfies Bankruptcy Code section 1129(a)(7). The liquidation analysis included in the Disclosure Statement and any other evidence proffered or adduced at the Confirmation Hearing (i) are persuasive and credible, (ii) have not been controverted by other evidence, and (iii) establish that each holder of an Impaired Claim or Interest either has accepted the Amended Plan or will receive or retain under the Amended Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

O. Acceptance or Rejection by Certain Classes -- 11 U.S.C. § 1129(a)(8). Classes 1, 2, and 3 are Classes of Unimpaired Claims that are conclusively presumed to have accepted the Amended Plan under Bankruptcy Code section 1126(f). Classes 4 and 5 are Impaired and, as set forth in the Voting Certification, the holders of such Claims have voted to accept the Amended Plan. Class 6 is Impaired and, as set forth in the Voting Certification, the holders of such Claims have voted to reject the Amended Plan. Classes 7, 8 and 9 are Classes of Impaired Claims and that are conclusively presumed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g). Notwithstanding that Bankruptcy Code section 1129(a)(8) has not been satisfied with respect to all Classes, pursuant to Bankruptcy Code section 1129(b), the Plan may be confirmed over the nonacceptance of Classes, 6, 7, 8 and 9.

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P. Treatment of Administrative and Priority Tax Claims -- 11 U.S.C. § 1129(a)(9).

The treatment of Administrative Expense Claims, Fee Claims and Priority Tax Claims pursuant to Article II of the Amended Plan satisfies the requirements of Bankruptcy Code section 1129(a)(9)(A), (B) and (C).

Q. Acceptance by Impaired Class -- 11 U.S.C. § 1129(a)(10). Classes 4 and 5, each entitled to vote on the Amended Plan, have voted to accept the Amended Plan in accordance with Bankruptcy Code section 1126(c). The accepting Classes, Classes 4 and 5, have accepted the Amended Plan pursuant to Bankruptcy Code section 1126(c) without the votes of insiders with Allowed Claims. Therefore, the requirement of Bankruptcy Code section 1129(a)(10), that at least one Class of Claims against or Interests in the Debtors that is Impaired under the Amended Plan has accepted the Amended Plan, determined without including any acceptance of the Amended Plan by any insider, has been satisfied.

R. Feasibility -- 11 U.S.C. § 1129(a)(11). The Amended Plan calls for liquidation of the Debtors. Therefore, confirmation of the Amended Plan is not likely to be followed by the need for further financial reorganization of the Debtors, thereby satisfying (or eliminating the need to consider) Bankruptcy Code section 1129(a)(11).

S. Payment of Fees -- 11 U.S.C. § 1129(a)(12). All fees due and payable under 28 U.S.C. § 1930 on or before the Effective Date, as determined by the Court, have been paid or will be paid on the Effective Date pursuant to Section 2.5 of the Amended Plan, thus satisfying the requirements of Bankruptcy Code section 1129(a)(12).

T. Continuation of Retiree Benefits -- 11 U.S.C. § 1129(a)(13). The Debtors have no retiree benefit obligations and, thus, Bankruptcy Code section 1129(a)(13) is inapplicable.

U. Postpetition Domestic Support Obligations and Disposable Income -- 11 U.S.C. § 1129(a)(14) and (15). Bankruptcy Code section 1129(a)(14) and (15) impose certain

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requirements on individual chapter 11 debtors. None of the Debtors are individuals. Accordingly, such sections are not implicated by the Amended Plan.

V. No Applicable Nonbankruptcy Law Regarding Transfers -- 11 U.S.C. § 1129(a)(16). The Debtors are moneyed, business, and/or commercial corporations and, therefore, Bankruptcy Code section 1129(a)(16) is not applicable.

W. Fair and Equitable; No Unfair Discrimination as to Rejecting Class -- 11 U.S.C. § 1129(b). Holders of Claims in Class 6 are Impaired and have voted to reject the Amended Plan. Holders of Interests in Classes 7, 8 and 9 are Impaired and deemed to have rejected the Amended Plan. Based upon the evidence proffered, adduced, and presented by the Debtors at the Confirmation Hearing, the Amended Plan does not discriminate unfairly and is fair and equitable with respect to the aforementioned Classes, as required by Bankruptcy Code section 1129(b)(1) and (b)(2), because no holder of any Claim or Interest of the Debtors that is junior to the Claims or Interests of Classes 6, 7, 8 or 9 is receiving or retaining any property under the Amended Plan on account of such junior Claims or Interests against the Debtors. Accordingly, the requirements of Bankruptcy Code section 1129(b)(1) and (b)(2) are satisfied with respect to Classes 6, 7, 8 and 9, and the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to Classes 6, 7, 8 and 9. Thus, the Amended Plan may be confirmed notwithstanding the deemed rejection of Classes 6, 7, 8 and 9.

X. Only One Plan -- 11 U.S.C. § 1129(c). Other than the Amended Plan (including previous versions thereof), no other plan has been filed in these chapter 11 cases. Accordingly, the requirements of Bankruptcy Code section 1129(c) have been satisfied.

Y. Principal Purpose -- 11 U.S.C. § 1129(d). The principal purpose of the Amended Plan is neither the avoidance of taxes nor the avoidance of the application of Section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the

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Amended Plan on any such grounds. The Amended Plan, therefore, satisfies the requirements of Bankruptcy Code section 1129(d).

Z. No Objection to Disposition of Contracts and Leases. No party to an Executory Contract or Unexpired Lease to be rejected by the Debtors pursuant to the Amended Plan has objected to the rejection thereof.

AA. Burden of Proof. The Debtors have met their burden of proving the elements of Bankruptcy Code section 1129(a) and (b) by a preponderance of the evidence.

BB. Satisfaction of Confirmation Requirements. The Amended Plan satisfies the requirements for confirmation set forth in Bankruptcy Code section 1129.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Confirmation of Amended Plan. The Amended Plan including the Plan Supplement is approved and confirmed under Bankruptcy Code section 1129.

2. Binding Effect. Effective on the Effective Date, and except as expressly provided in this Confirmation Order, the Amended Plan and its provisions shall be binding upon the Debtors, the Liquidation Trust, the Liquidation Trustee, the Creditors' Committee, any individual or entity acquiring or receiving property or a distribution under the Amended Plan and any holder of a Claim against or Interest in the Debtors, including all governmental entities, whether or not the Claim or Interest of such holder is Impaired under the Amended Plan and whether or not such holder has accepted the Amended Plan. Pursuant to Bankruptcy Code sections 1123(a) and 1142(a) and the provisions of this Confirmation Order, from and after the Effective Date, the Debtors, the Liquidation Trust and the Liquidation Trustee shall comply with the Amended Plan, the Plan Supplement and all other Amended Plan-related documents, and the Amended Plan, the Plan Supplement and all other Amended Plan-related documents shall be enforceable notwithstanding any otherwise applicable non-bankruptcy law.



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3. Application of Absolute Priority Rule. The Amended Plan satisfies the requirements of Bankruptcy Code section 1129(b) with respect to Classes 6, 7, 8 and 9 (*i.e.* the rejecting Classes). Therefore, the treatment of Classes 6, 7, 8 and 9 is approved.

4. Releases. The release provisions of Sections 11.3 and 11.4 of the Amended Plan, as modified by this Confirmation Order, are approved, are incorporated by reference into and are an integral part of this Confirmation Order. Such provisions shall be effective in accordance with their terms.

5. Exculpation. The exculpation provisions of Section 11.5 of the Amended Plan are approved, are incorporated by reference into and are an integral part of this Confirmation Order. Such provisions shall be effective in accordance with their terms.

6. Injunction. The injunction provisions of Section 11.6 of the Amended Plan are approved, incorporated by reference into and an integral part of this Confirmation Order. Such provisions shall be effective in accordance with their terms.

7. Cancellation of Interests. Pursuant to Section 5.9 of the Amended Plan, on the Effective Date, except for the purpose of evidencing a right to distribution under the Amended Plan and except as otherwise set forth in the Amended Plan, 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. Notwithstanding the foregoing, as set forth in paragraph 23 below, each of the Indentures shall continue in effect solely for the purposes of, as applicable: (a) allowing holders of Allowed Class 4 and Class 5 Claims to receive distributions under the Amended Plan; (b) allowing holders of Allowed Class 5 Claims to enforce the subordination provisions in the Subordinated Notes Indenture against holders of Allowed Class 6 Claims; and (c) allowing and preserving the rights of the Indenture Trustees to (i) make distributions in

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satisfaction of Allowed Class 4 and 5 Claims, (ii) maintain and exercise their respective Charging Liens against holders of Allowed Senior Notes Claims and Allowed Subordinated Notes Claims, as applicable, and distributions thereto, (iii) seek compensation and reimbursement for any reasonable and documented fees and expenses incurred in making such distributions, (iv) maintain and enforce any right to indemnification, expense reimbursement, contribution, or subrogation or any other claim or entitlement that the Indenture Trustees may have under the applicable Indentures, (v) exercise their rights and obligations relating to the interests of their holders pursuant to the applicable Indentures, and (vi) appear in these chapter 11 cases. For the avoidance of doubt, all indemnification obligations and expense reimbursement obligations of the Debtors arising under the Indentures in favor of the Indenture Trustees, and each of their respective directors, officers, employees, agents, affiliates, controlling persons, and legal and financial advisors, shall survive, remain in full force and effect, and be enforceable against the Liquidation Trustee on and after the Effective Date and solely enforceable through the exercise of the applicable Charging Lien against the holders of Allowed Senior Notes Claims, Second Lien Secured Claims, and Allowed Subordinated Notes Claims, as applicable, and distributions thereto.

8. Amended Plan Implementation Authorization. In accordance with Bankruptcy Code section 1142, upon the entry of this Confirmation Order, the Debtors, the Liquidation Trust and the Liquidation Trustee each acting by and through their respective officers and agents, hereby are authorized to take any and all actions necessary or appropriate to implement the Amended Plan, including, without limitation, forming the Liquidation Trust and entering into the Liquidation Trust Agreement (substantially in the form included in the Plan Supplement), without any further order of the Court. The Liquidation Trust shall be deemed for all purposes to have been created in connection with the Amended Plan and this Confirmation Order. Any

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officer of the Debtors and/or the Liquidation Trustee, as applicable, shall be authorized to take any action as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Amended Plan, whether or not specifically referred to in the Amended Plan or any exhibit thereto, without further order of the Court or further action by the Liquidation Trust or any other person.

9. Approval of the Global Settlement. The provisions of the Amended Plan, as discussed in detail in the Disclosure Statement, constitute a good-faith compromise and settlement pursuant to Bankruptcy Rule 9019 and Bankruptcy Code section 1123 of all of the outstanding issues between the Committee, the Second Lien Agent, the Indenture Trustees, the Second Lien Lenders, and the Second Lien Noteholders in these chapter 11 cases, including, without limitation, the calculation of the Adequate Protection Claims, the Second Lien Diminution Claims, the allocation of proceeds from all sales of the Debtors' assets, and all remaining counts asserted by the Committee in its adversary proceeding. The entry of this Confirmation Order constitutes the Court's approval of all the foregoing compromises and settlements embodied in the Amended Plan, and the Court's findings shall constitute its determination that such compromises and settlements are in the best interest of the Debtors, the Estates, the creditors and other parties in interest, and are fair, equitable, and within the range of reasonableness. On the Effective Date, all matters among the Committee, the Second Lien Agent, the Indenture Trustees, the Second Lien Lenders, and the Second Lien Noteholders in these chapter 11 cases shall be fully and finally resolved and all litigation related thereto shall be dismissed with prejudice.

10. Comprehensive Settlement of Claims and Controversies. Notwithstanding anything to the contrary in the Amended Plan, Section 5.13 of the Amended Plan is limited to the settlement of the outstanding issues between the Committee, the Second Lien Agent, the

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Indenture Trustees, the Second Lien Lenders, and the Second Lien Noteholders in these chapter 11 cases, including, without limitation, the calculation of the Adequate Protection Claims, the Second Lien Diminution Claims, the allocation of proceeds from all sales of the Debtors' assets, and all remaining counts asserted by the Committee in its adversary proceeding.

11. ~~10.~~ Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules or regulations of any state or any other governmental authority with respect to the implementation or consummation of the Amended Plan and any documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Amended Plan, the Disclosure Statement and any documents, instruments or agreements, and any amendments or modifications thereto.

12. Objection to Claims. Notwithstanding anything to the contrary in the Amended Plan, the second sentence of Section 6.2.2 of the Amended Plan is deleted.

13. ~~11.~~ Exemption from Certain Transfer Taxes. To the extent permitted by Bankruptcy Code section 1146(a), any post-Confirmation Date transfer from a Debtor to any Person pursuant to, in contemplation of, or in connection with the Amended 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 Amended 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 Amended Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real

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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.

14. ~~12.~~ Applicable Non-Bankruptcy Law. Pursuant to Bankruptcy Code sections 1123(a) and 1142(a), the provisions of this Confirmation Order, the Amended Plan, or any other amendments or modifications thereto shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

15. ~~13.~~ Approval of Liquidation Trust and Appointment of the Liquidation Trustee. The Court finds that formation of the Liquidation Trust is an essential element of the Amended Plan, and entry into the Liquidation Trust Agreement provided in the Plan Supplement is in the reasonable exercise of the Debtors' business judgment. The entry by the Debtors into the Liquidation Trust Agreement is approved and shall not be in conflict with any federal or state law. Further, the appointment of Eugene I. Davis as Liquidation Trustee is approved.

16. ~~14.~~ Transfers by Debtor; Vesting and Revesting of Assets. All transfers of property of the Estates, including, without limitation, the vesting of the Liquidation Trust Assets in the Liquidation Trust to make distributions to the Liquidation Trust Beneficiaries to be made pursuant to Section 9.6.4 of the Amended Plan, (i) are legal, valid and effective transfers of property, (ii) vest the transferees with good title to such property free and clear of all Claims, interests, Liens, charges or other encumbrances, except as expressly provided in the Amended Plan or this Confirmation Order, (iii) do not and will not constitute avoidable transfers under the Bankruptcy Code or under applicable law, (iv) do not and will not subject the Debtors, the

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Liquidation Trust or the Liquidation Trustee to any liability by reason of such transfer under the Bankruptcy Code or under applicable nonbankruptcy law, including, without limitation, any laws affecting successor, transferee or stamp or recording tax liability, and (v) are for good consideration and value. Pursuant to Bankruptcy Code sections 1141(b) and (c), all Liquidation Trust Assets shall vest in the Liquidation Trust free and clear of all Claims, interests, Liens, charges and other encumbrances. Such vesting does not constitute a voidable transfer under the Bankruptcy Code or applicable non-bankruptcy law.

17. ~~15.~~ Effect of Conflict Between Amended Plan and Confirmation Order. The provisions of the Amended Plan and of this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any Amended Plan provision and any provision of this Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall be deemed a modification of the Amended Plan and shall control and take precedence.

18. ~~16.~~ Authorization to Consummate Amended Plan. Notwithstanding Bankruptcy Rule 3020(e), this Confirmation Order shall take effect immediately upon its entry and the Debtor is authorized to consummate the Amended Plan immediately after entry of this Confirmation Order and the satisfaction or waiver of all other conditions to the Effective Date of the Amended Plan, in accordance with the terms of the Amended Plan. The Amended Plan shall become effective on the Effective Date.

19. ~~17.~~ Payment of Statutory Fees. All fees due and payable pursuant to 28 U.S.C. § 1930 shall be paid as soon as reasonably practicable following the Initial Distribution Date by

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the Liquidation Trustee. After the Effective Date, the Liquidation Trustee shall pay any and all such fees when due and payable.

20. ~~18.~~ Notice of Effective Date. On or within two (2) Business Days of the Effective Date, the Debtors shall file and serve a notice of occurrence of the Effective Date in substantially the form attached hereto as **Exhibit B**.

21. ~~19.~~ Operations Between the Confirmation Date and the Effective Date. During the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to as debtors-in-possession, subject to the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect. All actions taken by the Debtors during the period from the Confirmation Date through the Effective Date shall be, and shall be taken in a manner, consistent in all material respects with the Confirmation Order, this Amended Plan and the Liquidation Trust Agreement.

22. ~~20.~~ Creation and Implementation of the Liquidation Trust. Pursuant to the Amended Plan and the Liquidation Trust Agreement, on the Effective Date, the Liquidation Trust shall be established and become effective for the benefit of the Liquidation Trust Beneficiaries. The Liquidation Trust is authorized and empowered, pursuant to the Amended Plan, including, without limitation, Section 9.2 and the Liquidation Trust Agreement, to liquidate and administer the Liquidation Trust Assets and make distributions on account thereof as provided for under the Amended Plan, provided that the Liquidation Trust shall, simultaneously with the initial distribution to holders of Allowed Second Lien Claims, make a distribution to Silver Point Capital, L.P. of the amount of its reasonable documented professional fees (in an amount not to exceed \$200,000) at the direction of the Second Lien Agent and the Second Lien Indenture Trustee (each acting at the direction of the Majority Lenders (as defined in the Second Lien Term Loan)), which distribution to Silver Point shall be deemed to have been made as a

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distribution to holders of Allowed Second Lien Claims and shall be paid from Second Lien Liquidation Trust Assets.

23. ~~21.~~ Post-Effective Date Fees and Expenses. From and after the Effective Date, the Liquidation Trustee is authorized, in accordance with the Liquidation Trust Agreement, but without the necessity for any approval by the Court, to incur any reasonable and necessary expenses in connection with the performance of its duties under the Amended Plan, including in connection with retaining professionals and/or entering into agreements pursuant to Sections 9.6.3 and 9.6.9 of the Amended Plan.

24. ~~22.~~ Provisions Governing Distributions. The Debtors or Liquidation Trustee shall make all Plan Distributions required under the Amended Plan and the distribution provisions of Article VII of the Amended Plan shall be, and hereby are, approved in their entirety. For the avoidance of doubt, the Debtors acting through the Liquidation Trustee shall, on the Initial Distribution Date, make all Plan Distributions to holders of Allowed General Unsecured Claims from the Unsecured Plan Consideration available to be distributed on the Initial Distribution Date, less an amount of \$2.5 million (the "Unsecured Reserve"), which amount will be transferred to the Liquidation Trust. The Unsecured Reserve shall be held for, among other things, payment (pursuant to any applicable Charging Lien) of Indenture Trustee fees incurred after the Effective Date and payment to holders of Allowed General Unsecured Claims in connection with the claims reconciliation process.

25. ~~23.~~ Settlement of Indenture Trustees' Fees. Pursuant to section 5.14 of the Amended Plan, on the Effective Date, and without the filing of corresponding fee applications with the Bankruptcy Court, any reasonable and documented fees, costs, and expenses incurred by the Indenture Trustees (other than the Second Lien Indenture Trustee) and their professionals on or prior to the Effective Date shall be paid by the Estate in Cash up to the amount of \$400,000



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(the “Indenture Trustee Initial Fee”), with any excess amount to be paid in full on the Initial Distribution Date to each of the Indenture Trustees (other than the Second Lien Indenture Trustee) from the Unsecured Plan Consideration pursuant to any applicable Charging Lien.

26. ~~24.~~ Payment of Fees and Expenses of Second Lien Parties. The Debtors shall, on the Effective Date pay the fees and expenses of the Second Lien Agent, Second Lien Indenture Trustee, and the Ad Hoc Group of Second Lienholders (in each case whether accrued prepetition or postpetition and to the extent not otherwise paid during the Chapter 11 Cases) in the full amount invoiced (which may include estimated amounts for such fees and expenses accrued through the Effective Date but not previously paid), in each case without application by any such parties to this Court, and without notice and a hearing pursuant to section 1129(a)(4) of the Bankruptcy Code or otherwise; provided that (a) such parties shall submit such invoice to the Debtors at least 24 hours before the Effective Date and (b) such parties shall remit any excess amount, if any, paid on account of estimated fees and expenses promptly following final invoice by such party of all fees and expenses incurred.

27. ~~25.~~ Satisfaction of Claims. Except as otherwise provided in the Amended Plan or this Confirmation Order, any Plan Distributions and deliveries to be made on account of Allowed Claims under the Amended Plan shall be in complete satisfaction, settlement, and release of such Allowed Claims.

28. ~~26.~~ Setoff Rights. In the event that the value of the 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 Claim~~ that would otherwise become due to such claimant. Neither the failure to effectuate such a setoff nor the allowance of any Claim under the Amended Plan shall constitute a waiver or release by the Debtors or the

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Liquidation Trustee of any claims, rights or Causes of Action that the Debtors or the Liquidation Trust may possess against such claimant.

29. ~~27.~~ Authorization to Consummate. The Debtors are authorized to consummate the Amended Plan after entry of this Confirmation Order subject to satisfaction of the conditions precedent to the occurrence of the Effective Date set forth in Section 10.1 of the Amended Plan, or waiver of such conditions pursuant to Section 10.2 of the Amended Plan. The Debtors and the Liquidation Trustee, as applicable, are authorized and directed to execute, acknowledge and deliver such deeds, assignments, conveyances, and other assurances, documents, instruments of transfer, uniform commercial code financing statements, trust agreements, mortgages, indentures, security agreements and bills of sale and to take such other actions as may be reasonably necessary to perform the terms and provisions of the Amended Plan, all transactions contemplated by the Amended Plan, the Plan Supplement and all other agreements and/or documents related thereto.

30. ~~28.~~ Assumption of Executory Contract 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 parties to such Executory Contracts and Unexpired Leases to be assumed pursuant to the Amended Plan were afforded with good and sufficient notice of such assumption and an opportunity to object and be heard. Except as otherwise provided in this Confirmation Order, any and all objections or reservations of rights in connection with the assumption or an Executory Contract or Unexpired Lease under the Amended Plan, if any, are overruled on their merits.

31. ~~29.~~ Cure of Defaults for Assumed Executory Contracts and Unexpired Leases. Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Amended Plan shall be satisfied, pursuant to Bankruptcy Code section 365(b)(1),

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by payment of the default 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 Bankruptcy Code section 365 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 Bankruptcy Code section 365(b)(1) shall be made following the entry of a Final Order resolving the dispute and approving the assumption. Any counterparty to an Executory Contract or Unexpired Lease that failed to timely object to the proposed assumption or cure amount set forth in the Plan Supplement or the Second Plan Supplement shall be deemed to have consented to such assumption and agreed to the specified cure amount.

32. ~~30.~~ Rejection of Executory Contracts and Unexpired Leases. On the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected unless such Executory Contract or Unexpired Lease: (a) is listed on the Schedule of Assumed Contracts and Leases, (b) is listed on the Schedule of Contracts and Leases Neither Assumed Nor Rejected, or (c) is otherwise assumed pursuant to the terms of the Amended Plan, *provided, however*, that any Executory Contracts or Unexpired Leases that are the subject of a separate motion to assume or reject under Bankruptcy Code section 365 pending on the Effective Date shall be treated as provided in the Final Order resolving such motion; *provided further, however*, to the fullest extent permitted by applicable law, all indemnification provisions in existence prior to the date on which these chapter 11 cases were filed (whether in the by-laws, certificates of incorporation or formation, limited liability company agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, or otherwise) for any current or former directors, officers, managers, employees, direct and indirect sponsors, shareholders, direct

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and indirect affiliates, attorneys, accountants, investment bankers, or other professionals of the Debtors, as applicable, shall be reinstated, assumed, and remain intact and irrevocable and shall survive the Effective Date.

33. ~~31.~~ Claims Based on Rejection of Executory Contracts or Unexpired Leases. All Claims arising from the rejection of Executory Contracts or Unexpired Leases pursuant to the Amended Plan or this Confirmation Order must be filed with the Claims Agent according to the procedures established for the filing of proof of claim or before thirty (30) days after notice of entry of this Confirmation Order.

34. ~~32.~~ Dissolution of the Debtors. The Liquidation Trustee is 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, if any. For the avoidance of doubt, subject to making any Plan Distributions to holders of Allowed General Unsecured Claims on the Initial Distribution Date, and all payments to the Indenture Trustees pursuant to paragraph 21 herein, once all assets of a Debtor have been transferred to the Liquidation Trust or the Liquidation Trustee, as applicable, the Liquidation Trustee is authorized to take all necessary steps to dissolve such Debtor.

35. ~~33.~~ 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 these chapter 11 cases; *provided, however,* that the foregoing shall not apply to any matters concerning any (i) Fee Claims held or asserted by any Professional Persons retained by the Committee; (ii) Allowed

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Claims held by any member of the Committee; or (iii) Indenture Trustees' fees, costs and expenses provided for in Section 5.14 of the Amended Plan and paragraph 23 herein.

36. ~~34.~~ Securities Matters. Notwithstanding any language to the contrary contained in the Disclosure Statement, the Amended Plan, and/or this Confirmation Order, no provision of the Disclosure Statement, Amended Plan, or Confirmation Order shall (a) preclude the Securities and Exchange Commission from enforcing its police or regulatory powers or (b) release any non-debtor from liability in connection with any legal or equitable action or claim brought by the Securities and Exchange Commission.

37. ~~35.~~ Environmental Protection Agency. Nothing in this Order or the Plan releases, discharges, precludes, or enjoins: (i) any liability under environmental law to any governmental unit as defined in 11 U.S.C. § 101(27) ("Governmental Unit") that is not a "claim" as defined in 11 U.S.C. § 101(5); (ii) any environmental Claim of a Governmental Unit arising on or after the Confirmation Date; (iii) any environmental liability to a Governmental Unit that any entity is subject to as the owner or operator of property after the Confirmation Date; provided, however, that nothing in this clause (iii) shall be construed to deny a discharge, release, or preclusion of any Claim with respect to such real property for any costs incurred, expended, or paid by a Governmental Unit before the Effective Date or any penalties or fines owing for any days of alleged violations of environmental laws or regulations before the Effective Date; or (iv) any liability to a Governmental Unit on the part of any Person other than the Debtors, or Liquidation Trust. Nor shall anything in this Order or the Plan enjoin or otherwise bar a Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence. Nothing in this Order or the Plan shall (i) affect any setoff or recoupment rights of any Governmental Unit, or (ii) limit, diminish, or otherwise alter the Debtors' (or any successor in interest's) defenses, claims, causes of action, or other rights under applicable non-bankruptcy

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law with respect to any environmental liability to Governmental Units at owned or operated sites.

38. ~~36.~~ Texas Comptroller of Public Accounts. Notwithstanding anything else to the contrary in the Plan or this Confirmation Order, these provisions will govern the treatment of the claims of the Texas Comptroller of Public Accounts (the "Texas Comptroller"): (1) nothing provided in the Plan or this Confirmation Order shall affect or impair any statutory or common law setoff rights of the Texas Comptroller in accordance with 11 U.S.C. § 553; (2) nothing provided in the Plan or this Confirmation Order shall affect or impair any rights of the Texas Comptroller under applicable non-bankruptcy law to pursue any non-debtor third parties for tax debts or claims; (3) nothing provided in the Plan or this Confirmation Order shall be construed to preclude the payment of interest on the Texas Comptroller's administrative expense or priority tax claims; provided that nothing shall prohibit the Debtors or any successor in interest (including the Liquidation Trustee) from contesting any claim asserted by the Texas Comptroller, including without limitation, the validity, amount, classification and/or priority of the claim and whether payment of interest is appropriate; and (4) to the extent that interest is payable with respect to any administrative expense or priority tax claim of the Texas Comptroller, the interest rate shall be 4.5% per annum.

39. ~~37.~~ Internal Revenue Service. Notwithstanding any provision to the contrary in the Amended Plan, this Confirmation Order, and Plan Documents, nothing shall: (1) affect the ability of the Internal Revenue Service ("IRS") to pursue any non-Debtors to the extent allowed by non-bankruptcy law for any liabilities that may be related to any federal tax liabilities owed by the Debtors or the Debtors' Estates; (2) affect the rights of the United States to assert setoff and recoupment and such rights are expressly preserved; (3) require the IRS to file an administrative claim to receive payment for any liability described in Bankruptcy Code section

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503(b)(1)(B) and (C); (4) expand the scope of Bankruptcy Code Section 505; or (5) preclude the IRS from amending any pre-petition or post-petition Claim without first seeking Bankruptcy Court authorization. Priority Tax Claims shall be paid in full in Cash on the Effective Date or as soon as practicable thereafter, and to the extent the Priority Tax Claims (including any penalties, interest or additions to tax entitled to priority under the Bankruptcy Code), if any, are not paid on the Effective Date, the Priority Tax Claims shall accrue interest commencing on the Effective Date at the rate and method set forth in 26 U.S.C. Sections 6621 and 6622. IRS Administrative Expense Claims allowed pursuant to the Plan or Bankruptcy Code section 503 shall accrue interest and penalties as provided by non-bankruptcy law until paid in full. Moreover, notwithstanding any provision to the contrary in the Plan Documents, the Debtors and the Liquidation Trustee agree that: (a) the IRS will not be bound by any characterizations, for tax purposes, of any transaction as set forth in the Plan Documents; (b) the IRS shall not be bound by any characterizations, for tax purposes, of any valuation of any property as set forth in the Plan Documents and (c) they shall comply with the provisions of the Internal Revenue Code. Additionally, nothing in the Plan Documents shall: (a) be construed as a compromise or settlement of any IRS Claim or interest; (b) effect a release, discharge or otherwise preclude any Claim whatsoever against any Debtor by or on behalf of the IRS for any liability arising out of pre-petition or post-petition tax periods for which a required return has not been filed or as a result of a pending audit or audit that may be performed with respect to any pre-petition tax or post-petition tax return; and (c) nothing shall enjoin the IRS from amending any proof of claim against any Debtor with respect to any tax liability arising out of pre-petition or post-petition tax periods for which a required tax return has not been filed or from a pending audit or audit that may be performed with respect to any pre-petition or post-petition tax return. Further, except as provided elsewhere in this paragraph, any liability arising out of pre-petition or post-petition tax

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periods for which a required return has not been filed or as a result of a pending audit or audit that may be performed with respect to any pre-petition tax or post-petition tax return shall be paid in accordance with Bankruptcy Code section 1129(a)(9)(A) and (C).

40. ~~38.~~ Department of Interior. Notwithstanding any provision in the Amended Plan, this Confirmation Order or the Plan Documents, with respect to any interests in ~~executory~~ contracts, ~~unexpired~~ leases, covenants, operating rights agreements, rights-of-use and easement, and rights-of-way or other interests or agreements with the federal government (collectively, the “Federal Leases”) or involving (i) federal land or minerals or (ii) lands or minerals held in trust for federally-recognized Indian tribes or Indian individuals (collectively, “Indian Landowners”) or held by such Indian Landowners in fee with federal restriction on alienation (collectively, “Indian Land”), the Debtors and the Liquidation Trustee and any purchaser will comply with all applicable non-bankruptcy law and nothing in the Amended Plan, this Confirmation Order, or the Plan Documents shall be construed as a compromise or settlement of any Claim or interest with respect to the Federal Leases. Without limiting the foregoing, nothing in the Amended Plan, this Confirmation Order, or the Plan Documents shall: (i) be interpreted to set cure amounts for Federal Leases or to require the United States or Indian Landowners to novate or otherwise consent to the transfer of any Federal Leases; (ii) otherwise affect any decommissioning obligations and financial assurance requirements under the Federal Leases, as determined by the United States and any applicable Indian Landowner that must be met by the Debtors, the Liquidation Trustee or any purchaser; (iii) affect the United States’ or Indian Landowners’ right to assert, against the Debtors and the Debtors’ Estates, any decommissioning liability and/or Claim arising from the Debtors’ interest in any Federal Leases not assumed by the Debtors; or (iv) prohibit the United States or the Indian Landowners from amending their Claims without first seeking Bankruptcy Court approval. The United States’ and Indian Landowners’ rights to



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offset or recoup any amounts due under, or relating to any Federal Leases are expressly preserved.

41. ~~39.~~ 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 these chapter 11 cases or the Amended Plan pursuant to, and for purposes of, Bankruptcy Code sections 105(a) and 1142, including, without limitation, jurisdiction to:

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

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

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

(d) resolve any matters related to: (i) 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; (ii) any potential contractual obligation under any assumed Executory Contract or Unexpired Lease; and (iii) any dispute regarding whether a contract or lease is or was an Executory Contract or Unexpired Lease, as applicable;

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

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

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

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

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

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

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

(l) 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,

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any breach or default under the Liquidation Trust Agreement or the transactions contemplated by the Liquidation Trust Agreement;

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

(n) resolve any Disputed Claims;

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

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

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

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

(s) 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;

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

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

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

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

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

(y) enter a final decree closing these chapter 11 cases.

Dated: August \_\_\_\_\_, 2016  
Wilmington, Delaware

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THE HONORABLE LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

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**Exhibit A**

**(The Amended Plan)**

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**Exhibit B**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
Quicksilver Resources Inc., <u>et al.</u> , <sup>1</sup>	)	Case No. 15-10585 (LSS)
Debtors.	)	Jointly Administered

**NOTICE OF (I) ENTRY OF CONFIRMATION ORDER AND (II) EFFECTIVE DATE**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. An order (the “Confirmation Order”) of the Honorable Laurie Selber Silverstein, United States Bankruptcy Judge for the District of Delaware, confirming and approving the *First Amended Joint Chapter 11 Plan of Liquidation for Quicksilver Resources Inc. and its Affiliated Debtors* [Docket No. 1525] (including all exhibits thereto and as the same may be amended, modified or supplemented from time to time, the “Plan”)² was entered on August \_\_, 2016 [Docket No. \_\_].

2. All conditions precedent to the Effective Date pursuant to Article 10 of the Plan have been satisfied or waived. Therefore, today, \_\_, 2016, is the Effective Date of the Plan.

3. The Plan and its provisions are binding on, among others, the Debtors, all holders of Claims and Interests (irrespective of whether such Claims or Interests are impaired under the Plan or whether the holders of such Claims or Interests have accepted the Plan), and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors, as provided in the Plan.

4. Any holder of a Claim arising from the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan must file a proof of Claim with the Bankruptcy Court and serve such proof of Claim on the Debtors no later than \_\_, 2016. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease pursuant to Section 8.2 of the Plan for which proofs of Claim are not timely filed within that time period will be forever barred from assertion against the Debtors, the Estates, their successors and assigns, and their assets and properties, unless otherwise ordered by the Bankruptcy Court or as otherwise provided in the Plan.**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Quicksilver Resources Inc. [6163]; Barnett Shale Operating LLC [0257]; Cowtown Drilling, Inc. [8899]; Cowtown Gas Processing L.P. [1404]; Cowtown Pipeline Funding, Inc. [9774]; Cowtown Pipeline L.P. [9769]; Cowtown Pipeline Management, Inc. [9771]; Makarios Resources International Holdings LLC [1765]; Makarios Resources International Inc. [7612]; QPP Holdings LLC [0057]; QPP Parent LLC [8748]; Quicksilver Production Partners GP LLC [2701]; Quicksilver Production Partners LP [9129]; and Silver Stream Pipeline Company LLC [9384]. The Debtors’ address is 801 Cherry Street, Suite 4000, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Plan.

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5. The Administrative Bar Date is \_\_\_\_, 2016. Except as otherwise provided in the Plan or the Confirmation Order, each holder of an Administrative Expense Claim (to the extent such holder has not previously been paid and other than those Claims specifically provided for in Section 2.1.2 of the Plan) must file with the Bankruptcy Court a request for payment of such Administrative Expense Claim no later than the Administrative Bar Date. **Any holder of an Administrative Expense Claim that is required to file a request for payment of such Administrative Expense Claim that does not file such request with the Bankruptcy Court by the Administrative Bar Date, shall be forever barred, estopped, and enjoined from asserting such Administrative Expense Claim against the Debtors, and such Administrative Expense Claim shall be deemed released and discharged as of the Effective Date.**

6. 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 no later than \_\_\_\_, 2016 (the "Fee Claim Bar Date"). Subject to the provisions of Bankruptcy Code sections 328, 330(a), and 331, the Liquidation Trust shall pay each holder of an Allowed Fee Claim the full unpaid amount of such Allowed Fee Claim in Cash no later than fourteen (14) days after the date that such Claim is Allowed by order entered by the Bankruptcy Court. **Any Fee Claim not filed by the Fee Claim Bar Date (or such later date as may be agreed upon by the Liquidation Trustee) in accordance with Section 2.3 shall be deemed disallowed under the Plan and shall be forever barred against the Estates, the Liquidation Trust, or any of the Liquidation Trust Assets or property, and the holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset, recoup or recover such Claim.**

7. Copies of the Confirmation Order, the Plan and the Plan Supplement shall be available for inspection (i) at the Office of the Clerk of the Bankruptcy Court, (ii) at <http://www.pacer.gov>, or (iii) from the Claims Agent's website at <http://cases.gcginc.com/kwk>.



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Wilmington, Delaware  
Date: \_\_\_\_\_, 2016

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**RICHARDS, LAYTON & FINGER, P.A.**

Paul N. Heath (DE 3704)  
Amanda R. Steele (DE 5530)  
Rachel L. Biblo (DE 6012)  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

– and –

**AKIN GUMP STRAUSS HAUER & FELD LLP**

Charles R. Gibbs (admitted *pro hac vice*)  
Sarah Link Schultz (admitted *pro hac vice*)  
Travis A. McRoberts (DE 5274)  
1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201  
Telephone: (214) 969-2800  
Facsimile: (214) 969-4343

**COUNSEL FOR DEBTORS AND DEBTORS IN  
POSSESSION**

# Appendix B

## Liquidation Trust Agreement

## **KWK TRUST AGREEMENT**

This KWK Liquidating Trust Agreement (this "Agreement") is made this 30<sup>th</sup> day of August, 2016 by and among (i) Quicksilver Resources Inc. and its debtor affiliates, in the chapter 11 cases (the "Chapter 11 Cases") pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), jointly administered under Case Number 15-10585 (LSS) (collectively, the "Debtors") and (ii) Eugene I. Davis, as the trustee (together, with any successor appointed under the terms hereof, the "KWK Trustee," and together with the Debtors, the "Parties"). Capitalized terms used in this Agreement and not defined herein have the meanings ascribed to them in the *First Amended Joint Chapter 11 Plan of Liquidation for Quicksilver Resources Inc. and Its Affiliated Debtors* (the "Plan").

### **RECITALS**

- A. The Bankruptcy Court entered an order on August 16, 2016 confirming the Plan;
- B. The Liquidation Trust (as defined below) is established pursuant to the Plan as a liquidating trust in accordance with Treasury Regulation Section 301.7701-4(d) with no objective to continue or engage in the conduct of a trade or business except, to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidation Trust and the Plan.
- C. The Liquidation Trust is established for the purpose of, at the direction of the Trust Advisory Board or Unsecured Advisory Group, as applicable, liquidating the Liquidation Trust Assets in an expeditious but orderly manner for the benefit of the Second Lien Liquidation Trust Beneficiaries and the Unsecured Liquidation Trust Beneficiaries, as applicable.
- D. The Liquidation Trust is intended to qualify as two separate "grantor trusts" for U.S. federal income tax purposes pursuant to Sections 671-677 of the Internal Revenue Code of 1986, as amended, (the "Tax Code") with the Second Lien Liquidation Trust Beneficiaries treated as the grantors and owners of one trust and the Unsecured Liquidation Trust Beneficiaries treated as the grantors and owners of another trust.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein and in the Plan, the Debtors and the KWK Trustee agree as follows:

### **ARTICLE I DEFINITIONS**

#### 1.1 Definitions.

"Allowed Claim or Allowed Claim" (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.

“Bankruptcy Code” means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

“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 Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

“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).

“Cash” means the legal currency of the United States and equivalents thereof.

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

“Commencement Date” means March 17, 2015.

“Confirmation Date” means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Debtors’ Chapter 11 Cases.

“Confirmation Order” means the order entered by the Bankruptcy Court confirming the Plan, including all exhibits, appendices, supplements, and related documents.

“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, 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 KWK Trustee in accordance with applicable law, which objection, request for estimation, or dispute has not been determined by a Final Order, or (b) 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.

“Distributable General Unsecured Claim” means any unsecured Claim against any Debtor, including, but not limited to, (a) trade Claims, (b) unsecured Claims held by a non-

Debtor affiliate of the Debtors against the Debtors, (c) Claims arising out of the rejection of Executory Contracts and Unexpired Leases by any Debtor, and (d) Senior Notes Claims but excluding any Subordinated Notes Claim, Second Lien Deficiency Claim, or Intercompany Claim.

“Distribution Date” means the Initial Distribution Date or any of the Periodic Distribution Dates, as applicable.

“Effective Date” has the meaning ascribed to it in the Plan.

“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 Bankruptcy Code section 502(j) shall not render a Final Order not a Final Order.

“Liquidation Trust” means the trust created pursuant to the this Agreement on the Effective Date in accordance with the Plan, the Confirmation Order and the Liquidation Trust Agreement.

“Liquidation Trust Assets” means collectively, the Second Lien Liquidation Trust Assets and the Unsecured Liquidation Trust Assets. For the avoidance of doubt, from and after the Effective Date, the Liquidation Trust shall be vested with the right to receive Canadian Proceeds, which amounts shall be distributed in accordance with the terms of the Plan and this Agreement.

“Liquidation Trust Beneficiaries” means collectively, the Second Lien Liquidation Trust Beneficiaries and the Unsecured Liquidation Trust Beneficiaries.

“Liquidation Trust Causes of Action” means collectively, the Causes of Action transferred to the Liquidation Trust on the Effective Date and any defense or counterclaim to any Disputed Claim, but excluding any and all Causes of Action released and/or exculpated pursuant to the terms of the Plan.

“Liquidation Trust Interests” means collectively, the Second Lien Liquidation Trust Interests and the Unsecured Liquidation Trust Interests.

“Liquidation Trust Reserve” means, as more fully described in this Agreement, the Cash transferred to the Liquidation Trust on the Effective Date out of the Cash that would otherwise be payable to the holders of Allowed Second Lien Secured Claims as part of the Second Lien Plan Consideration to fund the operations of the Liquidation Trust.

“Person” has the meaning set forth in section 101(41) of the Bankruptcy Code.

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

“Second Lien Liquidation Trust Assets” means the assets to be transferred to the Liquidation Trust on the Effective Date other than the Unsecured Liquidation Trust Assets, including, without limitation, the Liquidation Trust Causes of Action (other than the causes of action that consist of defenses or counterclaims to a Distributable General Unsecured Claim), the Liquidation Trust Reserve, and all other property and assets of the Debtors remaining after segregation of the Unsecured Liquidation Trust Assets, reserving for Fee Claims, and payment of Administrative Expense Claims, U.S. Trustee Fees, Priority Tax Claims, Other Priority Claims, Other Secured Claims, First Liens Claims (if applicable), and the Cash component of the Second Lien Plan Consideration, including Canadian Proceeds that are payable to the holders of Allowed Second Lien Secured Claims. For the avoidance of doubt, from and after the Effective Date, the Liquidation Trust shall be vested with the right to receive Canadian Proceeds, which amounts shall be distributed in accordance with the terms of the Plan and this Agreement.

“Second Lien Liquidation Trust Beneficiaries” means the holders of the Second Lien Liquidation Trust Interests.

“Second Lien Liquidation Trust Interests” means the uncertified beneficial interests in the Liquidation Trust representing the right of each holder of an Allowed Second Lien Secured Claim to receive distributions from the Liquidation Trust on account of such Second Lien Liquidation Trust Interests in accordance with the terms of the Plan and this Agreement.

“Trust Advisory Board” means the board established and constituted as provided in Article VI of this Agreement for the purpose of overseeing, reviewing and guiding the activities and performance of the KWK Trustee (except with respect to the Unsecured Liquidation Trust Assets and the Claims reconciliation process with respect to Distributable General Unsecured Claims), and having the rights and responsibilities set forth in this Agreement.

“Unsecured Advisory Group” means the group of unsecured creditors established and constituted for the purposes of reviewing the KWK Trustee’s activities and advising the KWK Trustee, in each case, solely with respect to the Unsecured Plan Consideration, the Liquidation Trust Causes of Action (solely to the extent such causes of action consist of defenses or counterclaims to a Distributable General Unsecured Claim) and the Claims reconciliation

process with respect to Distributable General Unsecured Claims, for the benefit of the Unsecured Litigation Trust Beneficiaries.

“Unsecured Liquidation Trust Assets” means (i) the Unsecured Plan Consideration, less any amounts distributed directly by the Debtors acting through the KWK Trustee under the Plan to the holders of Allowed Distributable General Unsecured Claims, and (ii) the Liquidation Trust Causes of Action (solely to the extent such causes of action consist of defenses or counterclaims to a Distributable General Unsecured Claim).

“Unsecured Liquidation Trust Beneficiaries” means the holders of the Unsecured Liquidation Trust Interests.

“Unsecured Liquidation Trust Interests” means the uncertified beneficial interests in the Liquidation Trust representing the right of each holder of an Allowed Distributable General Unsecured Claim to receive distributions from the Liquidation Trust on account of such Unsecured Liquidation Trust Interests in accordance with the terms of the Plan and this Agreement.

“Unsecured Plan Consideration” means (i) \$17.5 million in Cash, plus (ii) 50% of recoveries from the Canadian Proceeds in excess of \$2.5 million up to \$17.5 million of recoveries from the Canadian Proceeds.

## **ARTICLE II KWK TRUSTEE**

2.1 Appointment. The Debtors hereby designate Eugene I. Davis to serve as the initial KWK Trustee under the Plan, and Eugene I. Davis hereby accepts such appointment and agrees to serve in such capacity, effective upon the Effective Date of the Plan.

2.2 Generally. The KWK Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Liquidation Trust and not otherwise. The KWK Trustee shall have the authority to bind the Liquidation Trust, but shall for all purposes hereunder be acting in the capacity as KWK Trustee, and not individually.

2.3 Scope of Authority. Subject to the oversight and direction of the Trust Advisory Board and the Unsecured Advisory Group, where applicable, and the provisions of the Plan and this Agreement, the KWK Trustee shall:

- (i) have the power and authority to hold, manage, convert to Cash, and distribute the Liquidation Trust Assets, including prosecuting and resolving the Liquidation Trust Causes of Action;
- (ii) hold the Liquidation Trust Assets for the benefit of the Liquidation Trust Beneficiaries who are entitled to distributions therefrom under the Plan, whether their Claims are Allowed on or after the Effective Date;

- (iii) have the power and authority to hold, manage, and distribute Cash or non-Cash Liquidation Trust Assets obtained through the exercise of its power and authority;
- (iv) have the power and authority to object to, prosecute objections to, compromise and settle Disputed Claims; and
- (v) such other responsibilities as are vested in the KWK Trustee on behalf of the Liquidation Trust pursuant to the Plan or Bankruptcy Court order or as may be necessary and proper to carry out the provisions of the Plan. In all circumstances, the KWK Trustee shall (i) with respect to the Second Lien Liquidation Trust Assets, act in the best interests of the Second Lien Liquidation Trust Beneficiaries and in good faith with respect to the Unsecured Liquidation Trust Beneficiaries and (ii) with respect to the Unsecured Liquidation Trust Assets and the Claims reconciliation process with respect to Distributable General Unsecured Claims, act in the best interests of the Unsecured Liquidation Trust Beneficiaries and in good faith with respect to the Second Lien Liquidation Trust Beneficiaries, and in each case in furtherance of the purpose of the Liquidation Trust. The KWK Trustee shall use its reasonable best efforts to comply promptly with an affirmative direction from the Trust Advisory Board or, with respect to the Unsecured Liquidation Trust Assets or the Claims reconciliation process with respect to Distributable General Unsecured Claims, the Unsecured Advisory Board.

2.4 Retention of Professionals. The KWK Trustee may retain and compensate attorneys and other professionals, with the consent of the Trust Advisory Board or Unsecured Advisory Group (as applicable), to assist in its duties as KWK Trustee on such terms as the KWK Trustee deems appropriate without Bankruptcy Court approval. Without limiting the foregoing, the KWK Trustee may retain any professional who represented parties in interest in the Chapter 11 Cases.

2.5 Other Activities. The KWK Trustee, other than in its capacity as KWK Trustee, shall be entitled to perform services for and be employed by third parties; provided, however, that such performance or employment affords the KWK Trustee sufficient time to carry out its responsibilities as KWK Trustee. The KWK Trustee may, with the consent and oversight of the Trust Advisory Board or Unsecured Advisory Group (as applicable), delegate the performance of its services under this Agreement and the fulfillment of responsibilities to other persons reasonably acceptable to the Trust Advisory Board and Unsecured Advisory Group (as applicable). Such persons shall be entitled to be compensated and to be reimbursed for out-of-pocket disbursements in the same manner as the KWK Trustee.

2.6 Limitation of the KWK Trustee's Authority.

(a) The KWK Trustee shall not and is not authorized to engage in any trade or business with respect to the Liquidation Trust Assets or any proceeds therefrom and shall engage only in activity reasonably necessary to, and consistent with, the liquidating purpose of the Liquidation Trust and shall take such actions consistent with the expeditious but orderly liquidation of the Liquidation Trust Assets as is required by applicable law and consistent with



the treatment of the Liquidation Trust as a liquidating trust under Treasury Regulation Section 301.7701-4(d), and such actions permitted therein.

(b) The KWK Trustee may invest Cash (including any earnings thereon or proceeds therefrom) as permitted by section 345 of the Bankruptcy Code (“Permitted Investments”), provided, however, that such investments are investments permitted to be made by a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable Internal Revenue Service guidelines, rulings, or other controlling authorities. Any Permitted Investment made as provided for herein must have a maturity date not in excess of three (3) months from the date of the acquisition of the Permitted Investment. The KWK Trustee shall deposit all Cash comprising the Liquidation Trust Assets in interest-bearing accounts (in all events, Cash relating to Second Lien Liquidation Trust Assets and Unsecured Liquidation Trust Assets shall be held in different accounts) maintained with a domestic bank or other financial institution having a shareholders’ equity or equivalent capital of not less than Five Hundred Million Dollars. The KWK Trustee shall not be liable for interest or obligated to produce income on any moneys received by the Liquidation Trust hereunder and held for distribution or payment, except as such interest or other income shall actually be received by the KWK Trustee.

(c) The Trust Advisory Board may from time to time, by majority vote, restrict the KWK Trustee from taking or initiating certain actions (except with respect to the Unsecured Liquidation Trust Assets and the Claims reconciliation process with respect to Distributable General Unsecured Claims) determined by the Trust Advisory Board to be contrary to the best interests of the Liquidation Trust or the Second Lien Liquidation Trust Beneficiaries.

(d) With respect to the Unsecured Liquidation Trust Assets and the Claims reconciliation process with respect to Distributable General Unsecured Claims, the Unsecured Advisory Group may from time to time, by majority vote, restrict the KWK Trustee from taking or initiating certain actions determined by the Unsecured Advisory Group to be contrary to the best interests of the Liquidation Trust or the Unsecured Liquidation Trust Beneficiaries.

2.7 Liability of KWK Trustee. Except as otherwise specifically provided herein, the KWK Trustee, the KWK Trustee’s employees, the Liquidation Trust’s employees, and the KWK Trustee’s or Liquidation Trust’s professionals or representatives shall not be held personally liable for any claim asserted against the Liquidation Trust, the KWK Trustee, the KWK Trustee’s employees, the Liquidation Trust’s employees or any of the KWK Trustee’s or Liquidation Trust’s professionals or representatives. Without limiting the generality of the foregoing, the KWK Trustee, the KWK Trustee’s employees, the Liquidation Trust’s employees and any of the KWK Trustee’s or Liquidation Trust’s professionals or representatives shall not be liable for any error of judgment made in good faith, or with respect to any action taken or omitted to be taken in good faith, except to the extent that the action taken or omitted to be taken by the KWK Trustee, the KWK Trustee’s employees, the Liquidation Trust’s employees or any of the KWK Trustee’s or Liquidation Trust’s professionals or representatives are determined by a final order of the Bankruptcy Court to be due to their own respective gross negligence or willful misconduct.

2.8 Reliance by KWK Trustee. Except as otherwise provided in Section 2.7 hereof: (i) the KWK Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties; (ii) the KWK Trustee may consult with legal counsel, financial or accounting advisors and other professionals to be selected by it and may rely, in good-faith, on the advice thereof, and the KWK Trustee shall not be liable for any action taken or omitted to be taken by it in accordance with the advice thereof; and (iii) persons dealing with the KWK Trustee shall look only to the applicable Liquidation Trust Assets to satisfy any liability incurred by the KWK Trustee to such person in carrying out the terms of this Agreement and neither the KWK Trustee nor its employees or the KWK Trustee's professionals or representatives shall have any personal obligation to satisfy any such liability.

2.9 Compensation of the KWK Trustee and Other Employees from the Second Lien Liquidation Trust Assets. Except as specifically set forth in section 2.10, the KWK Trustee shall be entitled to receive the following compensation:

- (a) a base monthly fee, which shall be \$17,500 for the first 12 months and \$15,000 thereafter;
- (b) compensation for reasonable services rendered by employees of the Liquidation Trust, provided, however, the terms of such compensation shall be approved by the Trust Advisory Board; and
- (c) reimbursement of reasonable costs and expenses.

The compensation set forth above shall be payable from Second Lien Liquidation Trust Assets after presentation of detailed invoices therefor to the Trust Advisory Board. Costs and expenses of the Liquidation Trust shall include (i) reasonable fees and expenses incurred in connection with the prosecution and settlement of any Liquidation Trust Causes of Action, (ii) reasonable fees and expenses incurred in connection with the Claims resolution process, and (iii) actual reasonable out-of-pocket fees and expenses of the KWK Trustee and its retained professionals including, without limitation, office rent, necessary travel, travel lodging, postage, personal computers and printers, photo copying, telephone and facsimile charges upon receipt of periodic billings.

2.10 Fees and Expenses in Connection with Claim Objections to Distributable General Unsecured Claims.

The payment of actual reasonable out-of-pocket fees and expenses incurred in connection with prosecuting Claim objections to Distributable General Unsecured Claims shall be payable from the Unsecured Liquidation Trust Assets after presentation of detailed invoices to the Unsecured Advisory Group.

2.11 Exculpation; Indemnification.

The KWK Trustee and the KWK Trustee's employees, agents and professionals shall be and hereby are exculpated by all Persons, including without limitation, all of the Liquidation Trust Beneficiaries, from any and all claims, causes of action and other assertions of liability arising out of the discharge of the powers and duties conferred upon such KWK Trustee by the Plan, this Agreement or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or applicable law or otherwise, except for actions or omissions to act that are determined by

Final Order of the Bankruptcy Court to have arisen out of gross negligence or willful misconduct after the Effective Date. No holder of a Claim or other party in interest, including a holder of a General Unsecured Claim, will have or be permitted to pursue any claim or cause of action against the KWK Trustee, the Liquidation Trust or the employees, professionals or representatives of either the KWK Trustee or the Liquidation Trust for making payments in accordance with the Plan or for implementing the provisions of the Plan. To the fullest extent permitted by applicable law, the Liquidation Trust shall, (i) indemnify, defend and hold harmless the KWK Trustee and the KWK Trustee's employees, agents and professionals from and against any and all of its actions or inactions in its capacity as, or on behalf of, the KWK Trustee, except for actions or inactions involving willful misconduct or gross negligence and (ii) reimburse the KWK Trustee and the KWK Trustee's agents and professionals for fees and expenses in defending any and all of its actions or inactions in its capacity as, or on behalf of, the KWK Trustee, except for actions or inactions involving willful misconduct or gross negligence. Any action taken or omitted to be taken with the express approval of (y) the Bankruptcy Court, (y) with respect to the Second Lien Liquidation Trust Assets and the Claims reconciliation process (other than with respect to Distributable General Unsecured Claims), the Trust Advisory Board or (z) with respect to the Unsecured Liquidation Trust Assets and the Claims reconciliation process with respect to Distributable General Unsecured Claims, the Unsecured Advisory Group, will conclusively be deemed not to constitute gross negligence or willful misconduct; provided, however, that the KWK Trustee shall not be obligated to comply with a direction of the Trust Advisory Board or the Unsecured Advisory Group, whether or not express, which would result in a change to the distribution provisions of this Agreement and the Plan.

2.12 Termination. The duties, responsibilities and powers of the KWK Trustee will terminate on the date the Liquidation Trust is dissolved pursuant to Article IX of this Agreement, under applicable law in accordance with the Plan, or by an Order of the Bankruptcy Court or by entry of a final decree closing the Debtors' Chapter 11 Cases before the Bankruptcy Court; provided, that Sections 2.9 and 2.10 above shall survive such termination, dissolution and entry. In the event the then-appointed KWK Trustee dies, is terminated, or resigns for any reason, the Trust Advisory Board (in consultation with the Unsecured Advisory Group) shall promptly designate a successor trustee.

2.13 No Bond. The KWK Trustee shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court and, in the event that the KWK Trustee is so otherwise ordered, all reasonable costs and expenses of procuring any such bond or surety shall be borne by the Second Lien Liquidation Trust Assets; unless such bond or surety requirement arises in connection with a Claim objection to a Distributable General Unsecured Claim, in which case it shall be borne by the Unsecured Liquidating Trust Assets .

**ARTICLE III**  
**ESTABLISHMENT OF THE LIQUIDATION TRUST**

3.1 Transfer of Assets to Liquidation Trust.

(a) Pursuant to the Plan, the Debtors and the KWK Trustee hereby establish the Liquidation Trust on behalf of the Liquidation Trust Beneficiaries. The KWK Trustee agrees to, subject to the terms of the Plan and this Agreement, accept and hold the Liquidation Trust Assets in the Liquidation Trust for the benefit of the Liquidation Trust Beneficiaries.

(b) For all federal income tax purposes, all parties (including the KWK 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 the 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 class of Liquidation Trust Beneficiaries to which such assets relate, followed by (ii) the transfer by each such class of 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 beneficial interests in the Liquidation Trust to which such assets relate. The Liquidation Trust shall be considered two separate grantor trusts for U.S. federal income tax purposes, one trust for the benefit of the Second Lien Liquidation Trust Beneficiaries and one trust for the benefit of the Unsecured Liquidation Trust Beneficiaries. Accordingly, each of the Second Lien Liquidation Trust Beneficiaries and the Unsecured Liquidation Trust Beneficiaries shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective shares of the Liquidation Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

3.2 Funding the Liquidation Trust. On the Effective Date or as soon as reasonably practicable thereafter, the Debtors shall deposit into a segregated Liquidation Trust account (a) Cash reserved to satisfy unclassified Claims under Article 2 of the Plan, as well as Other Priority Claims and Other Secured Claims under Article 3 of the Plan (which, to the extent used to pay such Claims, is neither Second Lien Plan Consideration nor Unsecured Plan Consideration), and (b) that portion of the Second Lien Plan Consideration not distributed to holders of Second Lien Secured Claims on the Initial Distribution Date (which amount would otherwise be payable to the holders of Allowed Second Lien Secured Claims as part of the Second Lien Plan Consideration) to fund the operations of the Liquidation Trust. For the avoidance of doubt, all costs and expenses associated with the operation of the Liquidation Trust shall be paid for out of the Second Lien Liquidation Trust Assets, except as specifically set forth herein.

3.3 Valuation of Assets. As soon as possible after the Effective Date, the KWK Trustee shall make a good-faith valuation of the Liquidation Trust Assets, and such valuation shall be made available from time to time, in writing, to the Liquidation Trust Beneficiaries and shall be used consistently by all parties (including, without limitation the KWK Trustee and the Liquidation Trust Beneficiaries) for all federal income tax purposes. 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 KWK 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.

3.5 Powers. The powers of the KWK Trustee shall, without any further Bankruptcy Court approval, but subject to the direction and oversight of the Trust Advisory Board (except with respect to the Unsecured Liquidation Trust Assets and the Claims reconciliation process with respect to Distributable General Unsecured Claims) and the Unsecured Advisory Group (solely with respect to the Unsecured Liquidation Trust Assets and the Claims reconciliation process with respect to Distributable General Unsecured Claims) and as limited by the Plan and this Agreement, include the authority:

1. to receive, manage, invest, supervise, protect, and liquidate the Liquidation Trust Assets, withdraw and make distributions from and pay taxes and other obligations owed by the Liquidation Trust from funds held by the KWK Trustee and/or the Liquidation Trust in accordance with the Plan, as long as such management is consistent with the Liquidating Trust's status as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and which actions are merely incidental to its liquidation and dissolution;
2. to execute, deliver, file, and record such contracts, instruments, releases, indentures, certificates, and other agreements or documents, and take such actions, as it may deem to be reasonably necessary or appropriate to effectuate and implement the terms and conditions of the Plan;
3. to calculate and implement distributions of the Liquidation Trust Assets contemplated by the Plan and in accordance with the interests of the Liquidation Trust Beneficiaries and to make distributions in accordance with the Plan;
4. to object to, prosecute objections to, compromise and settle Disputed Claims and causes of action on behalf of or against the Liquidation Trust in accordance with Section 3.6 hereof in accordance with the interest of the applicable Liquidation Trust Beneficiaries;
5. to vote any Claim or interest held by the Liquidation Trust in a case under the Bankruptcy Code and receive any distribution therefrom for the benefit of the Liquidation Trust;
6. to protect and enforce the rights to the Liquidation Trust Assets vested in the Liquidation Trust by this Agreement by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

7. to compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise resolve or settle, in accordance with the terms hereof, claims in favor of or against the Liquidation Trust as the Liquidation Trust shall deem advisable;
8. to determine and satisfy any and all liabilities created, incurred or assumed by the Liquidation Trust;
9. to file, if necessary, any and all tax and information returns with respect to the Liquidation Trust and pay taxes properly payable by the Liquidation Trust, if any;
10. prepare and file (or cause to be prepared and filed), on behalf of the Debtors, all other tax returns required to be filed or that the Liquidating Trustee otherwise deems appropriate;
11. request any appropriate tax determination, including, without limitation, a determination pursuant to Section 505 of the Bankruptcy Code;
12. to pay all reasonable expenses and make all other payments relating to the Liquidation Trust Assets;
13. to obtain insurance coverage with respect to the liabilities and obligations of the KWK Trustee and the Liquidation Trust (in the form of an errors and omissions policy, fiduciary policy or otherwise);
14. to obtain insurance coverage with respect to real and personal property which may become Liquidation Trust Assets, if any;
15. to retain and pay such law firms as counsel to the Liquidation Trust to aid the prosecution of any claims that constitute the Liquidation Trust Assets, and to perform such other functions relating thereto as may be appropriate;
16. to retain and pay a public accounting firm to perform such reviews and/or audits of the financial books and records of the Liquidation Trust as may be appropriate in the KWK Trustee's reasonable discretion or otherwise required hereby, and to prepare and file any tax returns or informational returns for the Liquidation Trust. The KWK Trustee may commit the Liquidation Trust to, and the Liquidation Trust shall pay, such accounting firm's reasonable compensation for services rendered and expenses incurred;
17. to retain and pay such third parties, including, without limitation, one or more paying agents, as the KWK Trustee may deem necessary or appropriate to assist the Liquidation Trust in carrying out its powers and duties under this Agreement. The KWK Trustee may commit the Liquidation Trust to and shall pay all such Persons compensation for services rendered and expenses incurred, as well as commit the Liquidation Trust to indemnify any such parties in connection with the performance of services;

18. to invest any moneys held as part of the Liquidation Trust Assets in accordance with the terms of Section 2.6(b) hereof;
19. in the event that either of the separate pools of assets held by the Liquidation Trust shall fail or cease to qualify as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), to take any and all necessary actions as it shall deem appropriate to have such assets treated as held by an entity classified as a partnership for federal tax purposes; and
20. to exercise such other powers as may be vested in or assumed by the Liquidation Trust or the KWK Trustee pursuant to the Plan, Bankruptcy Court order or as may be necessary and proper to carry out the provisions of the Plan.

Subject to (i) the direction and oversight of the Trust Advisory Board (except with respect to the Unsecured Liquidation Trust Assets and the Claims reconciliation process with respect to Distributable General Unsecured Claims) or the Unsecured Advisory Group (solely with respect to the Unsecured Liquidation Trust Assets and the Claims reconciliation process with respect to Distributable General Unsecured Claims), and (ii) express provisions of this Agreement and the Plan, the KWK Trustee shall have absolute discretion to pursue or not to pursue any and all claims, rights, or causes of action, or defenses as it determines is in the best interests of the applicable Liquidation Trust Beneficiaries and consistent with the purposes of the Liquidation Trust, and shall have no liability for the outcome of its decision. The KWK Trustee may incur any reasonable and necessary expenses in liquidating and converting the Liquidation Trust Assets to Cash. Neither the KWK Trustee nor its successors or assigns shall fund or be obligated to fund (whether directly or indirectly) the costs of pursuing any Claim. No person dealing with the Liquidation Trust shall be obligated to inquire into the authority of the KWK Trustee in connection with the protection, conservation or disposition of Liquidation Trust Assets.

### 3.6 Prosecution of Liquidation Trust Causes of Action.

(a) Authority to Prosecute and Settle Liquidation Trust Causes of Action. After the Effective Date, only the KWK Trustee shall have the authority to maintain, prosecute, settle, dismiss, abandon, or otherwise dispose of the Liquidation Trust Causes of Action. The KWK Trustee may enter into and consummate settlements and compromises of the assets of the Liquidation Trust Causes of Action without notice to or approval by the Bankruptcy Court.

(b) Standard of Conduct. The KWK Trustee shall, with respect to the Second Lien Liquidation Trust Assets (including in prosecuting and settling any Liquidation Trust Cause of Action (other than Liquidation Trust Causes of Action that consist of defenses or counterclaims to a Distributable General Unsecured Claim) contained therein), act in the best interests of the Second Lien Liquidation Trust Beneficiaries and in good faith with respect to the Unsecured Liquidation Trust Beneficiaries and (ii) with respect to the Unsecured Liquidation Trust Assets (including in prosecuting and settling any Liquidation Trust Causes of Action that consist of defenses or counterclaims to Distributable General Unsecured Claims) and the Claims reconciliation process with respect to Distributable General Unsecured Claims, act in the best

interests of the Unsecured Liquidation Trust Beneficiaries and in good faith with respect to the Second Lien Liquidation Trust Beneficiaries. In settling any Liquidation Trust Cause of Action that is a Second Lien Liquidation Trust Asset, the KWK Trustee shall consult with the Unsecured Advisory Group.

(c) Estimation of Claims. With respect to Claims to receive distributions from the Liquidation Trust, including Allowed Fee Claims, Allowed Administrative Expense Claims, Allowed U.S. Trustee Fees, Allowed Priority Tax Claims, Allowed Other Priority Claims, Allowed Other Secured Claims, and Allowed First Liens Claims (if applicable), the KWK Trustee, may at any time request that the Bankruptcy Court estimate any contingent Claim, unliquidated Claim or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether any of the Debtors or any other Person previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent Claim, unliquidated Claim or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the KWK Trustee may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

3.7 Rights of Debtors. The Debtors shall have no Claim to or right or interest in, whether direct, residual, contingent or otherwise, in the Liquidation Trust Assets once such assets have been transferred to the Liquidation Trust.

#### **ARTICLE IV LIQUIDATION TRUST BENEFICIARIES**

4.1 Rights of Beneficiaries. Each Liquidation Trust Beneficiary will be entitled to participate in the rights due to a Liquidation Trust Beneficiary hereunder. Each Liquidation Trust Beneficiary shall take and hold its uncertificated beneficial interest subject to all of the terms and provisions of this Agreement, the Confirmation Order, and the Plan. The interest of a Liquidation Trust Beneficiary in the Liquidation Trust is in all respects personal property, and the death, insolvency, or incapacity of an individual Beneficiary, shall not terminate or affect the validity of this Agreement. A Liquidation Trust Beneficiary shall have no title to, right to, possession of, management of, or control of, the Liquidation Trust Assets except as herein expressly provided. No surviving spouse, heir or devisee of any deceased Liquidation Trust Beneficiary shall have any right of dower, homestead, or inheritance, or of partition, or any other right, statutory or otherwise, in the Liquidation Trust Assets, but the whole title to all the Liquidation Trust Assets shall be vested in the KWK Trustee and the sole interest of the



Liquidation Trust Beneficiaries shall be the rights and benefits given to such persons under this Agreement.

4.2 Limit on Transfer of Interests of Beneficiaries. The interest of the Liquidation Trust Beneficiaries in the Liquidation Trust, which are reflected only on the records of the Liquidation Trust maintained by the KWK Trustee, are not negotiable and shall not be transferable except: (a) pursuant to applicable laws of descent and distribution (in the case of a deceased individual Liquidation Trust Beneficiary) or (b) by operation of law. The KWK Trustee shall not be required to record any transfer in favor of any transferee who, in the sole discretion of the KWK Trustee, is or might be construed to be ambiguous, or to create uncertainty as to the holder of the interest in the Liquidation Trust. Until a transfer is in fact recorded on the books and records maintained by the KWK Trustee for the purpose of identifying Liquidation Trust Beneficiaries, the KWK Trustee, whether or not in receipt of documents of transfer or other documents relating to the transfer, may nevertheless make distributions and send communications to Liquidation Trust Beneficiaries, as though it has no notice of any such transfer, and in so doing the KWK Trustee shall be fully protected and incur no liability to any purported transferee or any other Person.

4.3 Identification of Beneficiaries. In order to determine the actual names, addresses, and tax identification numbers of the Liquidation Trust Beneficiaries, the KWK Trustee shall be entitled to conclusively rely on the names, address, and tax identification numbers set forth in the Debtors' Schedules, filed proofs of claim, or other register of beneficial holders created by the applicable agent or trustee. Each Liquidation Trust Beneficiary shall furnish in writing its name, address, and tax identification number to the KWK Trustee within thirty (30) days of a written request from the KWK Trustee. In the event that any such Liquidation Trust Beneficiary fails to provide the information required by the preceding sentence within one year of such request, the Claim of such holder shall be discharged and forever barred; provided, however, that any such distributions shall be redistributed to other Liquidation Trust Beneficiaries in accordance with this Agreement. Each distribution by the KWK Trustee to the Liquidation Trust Beneficiaries shall be made in accordance with the terms set forth in the Plan, any order of the Bankruptcy Court, and this Agreement. In the event of any inconsistency between the Plan and this Agreement, the terms of this Agreement shall govern.

## **ARTICLE V PURPOSE, AUTHORITY, LIMITATIONS AND DISTRIBUTIONS**

5.1 Purpose of the Liquidation Trust. The Liquidation Trust shall be established for the sole purpose of liquidating, administering and distributing its assets, in accordance with Treasury Regulation Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business and shall engage only in activities reasonably necessary to, and consistent with, the liquidating purpose of the Liquidation Trust. Accordingly, the KWK Trustee, in an expeditious but orderly manner, shall liquidate and convert to cash the Liquidation Trust Assets, make timely distributions and not unduly prolong the duration of the Liquidation Trust. The liquidation of the Liquidation Trust Assets may be accomplished either through the prosecution, compromise and settlement, abandonment or dismissal of any or all Claims, rights, Causes of Action, or otherwise. The Liquidation Trust shall not be deemed a successor-in-

interest of the Debtors for any purpose other than as specifically set forth in the Plan or in this Agreement.

5.2 Books and Records. The KWK Trustee shall maintain, in respect of the Liquidation Trust estate and the Liquidation Trust Beneficiaries and all others to receive distributions under this Agreement, books and records relating to the assets and income of the Liquidation Trust and the payment of expenses of, and liabilities of, claims against or assumed by, the Liquidation Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof in accordance with Article VIII hereof and to comply with applicable provisions of law, provided that separate books and records shall be maintained with respect to the Second Lien Liquidation Trust Assets and the Unsecured Liquidation Trust Assets. Except as provided in Section 8.1 hereof, nothing in this Agreement requires the KWK Trustee to file any accounting or seek approval of any court with respect to the administration of the Liquidation Trust, or as a condition for making any payment or distribution out of the Liquidation Trust Assets. Liquidation Trust Beneficiaries shall have the right upon thirty (30) days' prior written notice delivered to the KWK Trustee to inspect such books and records, that relate to the assets for which such Liquidation Trust Beneficiary is a beneficiary, provided that, if so requested, such Liquidation Trust Beneficiary shall have entered into a confidentiality agreement satisfactory in form and substance to the KWK Trustee.

5.3 Payment of Distribution Amounts. At least annually, the KWK Trustee shall make distributions to the applicable Liquidation Trust Beneficiaries of all Cash on hand from the Liquidation Trust Assets that relate to such Liquidation Trust Beneficiaries, in accordance with this Agreement (including any Cash received from the Debtors on the Effective Date, and treating as Cash for purposes of this section any permitted investments under the Plan), except such amounts (i) that are reserved for and payable to Allowed Fee Claims, Allowed Administrative Expense Claims, Allowed U.S. Trustee Fees, Allowed Priority Tax Claims, Allowed Other Priority Claims, Allowed Other Secured Claims, and Allowed First Liens Claims (if applicable), (ii) that would be distributable to a holder of a Disputed Claim if such Disputed Claim had been Allowed prior to the time of such distribution (but only until such Claim is resolved), (iii) that are reasonably necessary to meet contingent liabilities and to maintain the value of the assets of the Liquidation Trust during liquidation, (iv) that are necessary to pay reasonable expenses of the Liquidation Trust (including, but not limited to, any taxes imposed on the Liquidation Trust or in respect of its assets), and (v) that are necessary to satisfy other liabilities incurred by the Liquidation Trust in accordance with the Plan or this Agreement.

5.4 Payment of Compensation of KWK Trustee. The KWK Trustee may pay the compensation of the KWK Trustee and other costs and expenses of the Liquidation Trust before approving or making distributions to or for the Liquidation Trust Beneficiaries.

5.5 Administration of Distributions.

(a) Manner of Payment. At the option of the KWK Trustee, any Cash payment to be made hereunder may be made by a check or wire transfer.

(b) Interest on Claims. Unless otherwise specifically provided for in the Plan or the Confirmation Order, postpetition interest shall not accrue or be paid on any Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Commencement Date on any Claim. Unless otherwise specifically provided for in the Plan or the Confirmation Order, interest shall not accrue or be paid upon any Claim in respect of the period from the Commencement Date to the date a final distribution is made thereon if and after such Claim becomes an Allowed Claim.

(c) Setoffs and Recoupment.

The KWK Trustee may, but shall not be required to, setoff against or recoup from any Claim any Claims of any nature whatsoever that the KWK Trustee may have against the claimant, provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the KWK Trustee or their respective successors of any such Claim it may have against such claimant.

(d) Unclaimed Distributions. In the event that any distribution to any Liquidation Trust Beneficiary is returned as undeliverable, the KWK Trustee shall use commercially reasonable efforts to determine the current address of such Liquidation Trust Beneficiary, but no distribution to such Liquidation Trust Beneficiary shall be made unless and until the KWK Trustee has determined the then-current address of such Liquidation Trust Beneficiary, at which time such distribution shall be made to such Liquidation Trust Beneficiary without interest; provided that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one (1) year from the Effective Date. After such date, all unclaimed property or interests in property shall be returned by the KWK Trustee to, and shall revert to the Liquidation Trust and the Claim of any Liquidation Trust Beneficiary to such property or interest in property shall be discharged and forever barred; provided, however, that unclaimed distributions made by the KWK Trustee shall be redistributed in accordance with the priorities set forth in the Plan and this Agreement.

(e) Compliance with Laws. Any and all distributions of Liquidation Trust Assets shall be in compliance with applicable laws, including but not limited to, applicable federal and state securities and tax laws.

(f) Abandonment. With the approval of the Trust Advisory Board (or, with respect to the Unsecured Liquidation Trust Assets, the Unsecured Advisory Group), the KWK Trustee may abandon in any commercially reasonable manner (including abandonment or donation to a charitable organization of the KWK Trustee's choice) any property that the KWK Trustee reasonably concludes is of no benefit to the applicable Liquidation Trust Beneficiaries.

5.6 Periodic Evaluation.

(a) Claims Analysis. On the first anniversary of the Effective Date, and every six (6) months thereafter, the KWK Trustee shall (a) with respect to each Claim or cause of action held by the Liquidation Trust (i) estimate the potential recovery relating to such Claim or cause of action, (ii) estimate the cost to the Liquidation Trust to achieve such result, and (iii) estimate the time required to obtain such a result and (b) prepare a report to the Trust Advisory Board and Unsecured Advisory Group containing such information. The Trust Advisory Board or Unsecured Advisory Group, as applicable, shall instruct the KWK Trustee to settle or abandon

those Claims or causes of action which, in the sole discretion of the Trust Advisory Board or Unsecured Advisory Group, as applicable, are no longer economical to pursue.

(b) Claims Reconciliation Process. Every six (6) months after the Effective Date, the KWK Trustee shall prepare a report to the Unsecured Advisory Group containing an update with respect to the Claims reconciliation process with respect to Distributable General Unsecured Claims.

## **ARTICLE VI TRUST ADVISORY BOARD**

### 6.1 Trust Advisory Board.

(a) The Trust Advisory Board shall be comprised of three members initially selected by the Second Lien Agent. The Trust Advisory Board shall have the authority and responsibility to oversee, review, and guide the activities and performance of the Liquidation Trust (except with respect to the Unsecured Liquidation Trust Assets and the Claims reconciliation process with respect to Distributable General Unsecured Claims) and shall have the authority to remove the KWK Trustee for any reason, in consultation with the Unsecured Advisory Group. Without limiting the foregoing, in addition to the other powers and duties of the Trust Advisory Board set forth separately in the Plan or this Agreement, the Trust Advisory Board shall have the authority at any meeting of the Trust Advisory Board to (i) make any determination in accordance with this Agreement with respect to or restriction on the use or disposition of Second Lien Liquidation Trust Assets, (ii) make any determination with respect to (x) the compensation of the KWK Trustee for its services rendered under this Agreement and the Plan or (y) the reimbursement of expenses incurred by the KWK Trustee in performing its duties under this Agreement and the Plan; and (iii) vote with respect to an amendment of this Agreement pursuant to Section 10.1 of this Agreement. The KWK Trustee shall consult with and provide information to the Trust Advisory Board.

(b) Notwithstanding anything in this Article VI, the Trust Advisory Board shall not take any action which will cause the Liquidation Trust to fail to qualify as one or more “liquidating trusts” for U.S. federal income tax purposes.

### 6.2 Manner of Acting.

(a) A majority of the total number of members of the Trust Advisory Board then in office shall constitute a quorum for the transaction of business at any meeting of the Trust Advisory Board. The affirmative vote of a majority of the members of the Trust Advisory Board present at a meeting at which a quorum is present shall be the act of the Trust Advisory Board except as otherwise required by law or as provided in this Agreement. Any or all of the members of the Trust Advisory Board may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Any member of the Trust Advisory Board participating in a meeting by this means is deemed to be present in person at the meeting.

(b) Any member of the Trust Advisory Board who is present at a meeting of the Trust Advisory Board when action is taken is deemed to have assented to the action taken unless: (i) such member of the Trust Advisory Board objects at the beginning of the meeting (or promptly upon his/her arrival) to holding it or transacting business at the meeting; or (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice of his/her dissent or abstention to the Trust Advisory Board before its adjournment. The right of dissent or abstention is not available to any member of the Trust Advisory Board who votes in favor of the action taken.

6.3 Trust Advisory Board's Action Without a Meeting. Any action required or permitted to be taken by the Trust Advisory Board at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the Trust Advisory Board as evidenced by one or more written consents describing the action taken, signed by the Trust Advisory Board and filed with the minutes or proceedings of the Trust Advisory Board.

6.4 Tenure, Removal, and Replacement of the members of the Trust Advisory Board. The authority of the members of the Trust Advisory Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Liquidation Trust is dissolved in accordance with Section 9.1. The service of the members of the Trust Advisory Board will be subject to the following:

(a) The members of the Trust Advisory Board will serve until death or resignation pursuant to subsection (b) below, or removal pursuant to subsection (c) below;

(b) A member of the Trust Advisory Board may resign at any time by providing a written notice of resignation to the remaining members of the Trust Advisory Board. Such resignation will be effective when a successor is appointed as provided herein;

(c) The members of the Trust Advisory Board may be removed, and in the event of a vacancy in such member's position (whether by removal, death or resignation) a new member may be appointed, by the unanimous vote of the remaining members of the Trust Advisory Board. The appointment of a successor member of the Trust Advisory Board will be evidenced by the filing with the Bankruptcy Court of a notice of appointment, which notice will include the name, address, and telephone number of the successor member of the Trust Advisory Board;

(d) Immediately upon appointment of any successor member of the Trust Advisory Board, all rights, powers, duties, authority, and privileges of the predecessor member of the Trust Advisory Board hereunder will be vested in and undertaken by the successor member of the Trust Advisory Board without any further act; and the successor member of the Trust Advisory Board will not be liable personally for any act or omission of the predecessor member of the Trust Advisory Board.

6.5 Out-of-Pocket Expenses. Each member of the Trust Advisory Board shall be entitled to reimbursement by the KWK Trustee from the Second Lien Liquidation Trust Assets for actual, reasonable out-of-pocket fees and expenses incurred in their capacity as a member of the Trust Advisory Board (which shall not include legal or other professional advisors). Except as provided for in this Section 6.5, the members of the Trust Advisory Board shall not be entitled

to receive any other form of compensation.

6.6 Liability of Trust Advisory Board. Except as otherwise specifically provided herein, the members of the Trust Advisory Board shall not be held personally liable for any claim asserted against any such Person, the Liquidation Trust, the KWK Trustee, the KWK Trustee's employees, the Liquidation Trust's employees, or any of the KWK Trustee's or Liquidation Trust's professionals or representatives. Without limiting the generality of the foregoing, the members of the Trust Advisory Board shall not be liable for any error of judgment made in good faith, or with respect to any action taken or omitted to be taken in good faith, except to the extent that the action taken or omitted to be taken by is determined by a Final Order of the Bankruptcy Court to be due to their own respective intentional breach of this Agreement, gross negligence, or willful misconduct.

6.7 Exculpation; Indemnification. The members of the Trust Advisory Board shall be and hereby are exculpated by all Persons, from any and all claims, causes of action, and other assertions of liability arising out of the discharge of the powers and duties conferred upon such members of the Trust Advisory Board by the Plan, this Agreement, or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or applicable law or otherwise, except for actions or omissions to act that are determined by Final Order of the Bankruptcy Court to be due to their own respective intentional breach of this Agreement, gross negligence, or willful misconduct after the Effective Date. No Liquidation Trust Beneficiary or other party in interest will have or be permitted to pursue any claim or cause of action against the members of the Trust Advisory Board for making or authorizing payments in accordance with the Plan or for implementing the provisions of the Plan. To the fullest extent permitted by applicable law, the Liquidation Trust shall, from the Second Lien Liquidation Trust Assets, (i) indemnify, defend, and hold harmless the members of the Trust Advisory Board from and against any and all of their actions or inactions in their capacities as such, except for actions or inactions involving willful misconduct or gross negligence and (ii) reimburse the members of the Trust Advisory Board for fees and expenses incurred in defending any and all of their respective actions or inactions in their capacities as such, except for actions or inactions involving willful misconduct or gross negligence. Any action taken or omitted to be taken with the express approval of the Bankruptcy Court will conclusively be deemed not to constitute gross negligence or willful misconduct.

## **ARTICLE VII SUCCESSOR KWK TRUSTEE**

7.1 Resignation. The KWK Trustee may resign by giving not less than ninety (90) days prior written notice thereof to the Trust Advisory Board and Unsecured Advisory Group.

7.2 Removal. The KWK Trustee may be removed upon the unanimous vote of the Trust Advisory Board, in consultation with the Unsecured Advisory Group, with or without cause. Any removal of the KWK Trustee shall become effective on such date as may be specified by the Trust Advisory Board. In the event of the removal of the KWK Trustee, the

KWK Trustee shall be entitled to immediate payment of all compensation earned by the KWK Trustee through and including the date of such removal.

7.3 Acceptance of Appointment by Successor KWK Trustee. Any successor KWK Trustee shall be appointed by the Trust Advisory Board, with the consent of the Unsecured Advisory Group, by an acknowledged written instrument delivered to the successor KWK Trustee, or if the Trust Advisory Board fails to timely appoint such successor, the Bankruptcy Court. Any successor KWK Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the Liquidation Trust records. Thereupon, such successor KWK Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of his predecessor in the Liquidation Trust with like effect as if originally named herein; provided, however, that a removed or resigning KWK Trustee shall, nevertheless, when requested in writing by the successor KWK Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor KWK Trustee under the Liquidation Trust all the estates, properties, rights, powers, and trusts of such predecessor KWK Trustee.

## **ARTICLE VIII TAX MATTERS**

### 8.1 Tax Reporting.

(a) Tax Returns and Statements. The KWK Trustee shall file tax returns for the Liquidation Trust treating the Liquidation Trust as two separate grantor trusts pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this Section 8.1 and Section 9.10 of the Plan, one trust for the benefit of the Second Lien Liquidation Trust Beneficiaries and one trust for the benefit of the Unsecured Liquidation Trust Beneficiaries. The KWK 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 KWK 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.

(b) Allocations of Liquidation Trust Taxable Income. Subject to the provisions of Section 8.2(a) hereof, allocations of Liquidation Trust taxable income among the Liquidation Trust Beneficiaries shall be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (without regard to any restrictions on distributions described herein) if, immediately prior to such deemed distribution, the Liquidation Trust had distributed all its assets (valued at their tax book value) to the appropriate class of Liquidation Trust Beneficiaries, in each case up to the tax book value of the assets treated as contributed by the Liquidation Trust Beneficiaries, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidation Trust. Taxable loss of the Liquidation Trust shall be allocated by reference to the manner in which an

economic loss would be borne immediately after a liquidating distribution of the Liquidation Trust Assets. The tax book value of the Liquidation Trust Assets for this purpose shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, the applicable tax regulations, and other applicable administrative and judicial authorities and pronouncements.

(c) Payment of Taxes. The KWK Trustee shall be responsible for payments, out of the Second Lien Liquidation Trust Assets or the Unsecured Liquidation Trust Assets to the extent imposed directly on the Unsecured Liquidation Trust Assets or arising from Disputed Distributable General Unsecured Claims, of any taxes imposed on the trust or its assets including any Disputed Claims reserve with respect to Liquidation Trust Assets. In the event, and to the extent, any Cash retained on account of Disputed Claims in a Disputed Claims reserve 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 such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the KWK Trustee as a result of the resolutions of such Disputed Claims; provided, however, that any taxes that reduce distributions pursuant to the foregoing clauses (i) and (ii) shall, for all purposes of this Agreement, be treated as amounts distributed to those holders of Claims whose distributions are so reduced.

8.2 Tax Treatment of Disputed Claims Reserve. Subject to contrary definitive guidance from the Internal Revenue Service or a court of competent jurisdiction (including the receipt by the KWK Trustee of a private letter ruling if the KWK Trustee so requests, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the KWK Trustee), the KWK 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 KWK Trustee and the Liquidation Trust Beneficiaries) shall report for U.S. federal, state and local income tax purposes consistently with the foregoing.

8.3 Withholding. The KWK Trustee may withhold from amounts otherwise distributable to any entity any and all amounts, determined in the KWK 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 distribution. Any party issuing any instrument or making any distribution under the Plan has the right, but not the obligation, to not make a distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations and, if any party issuing any instrument or making any distribution under the Plan fails to withhold with respect to any such holder’s distribution, and is later held liable for the amount of such withholding, the holder shall reimburse such party. The KWK Trustee may require, as a condition to the receipt of a 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 5.5(e) of this Agreement.

8.4 Valuation. The valuation of the Liquidation Trust Assets prepared pursuant to Section 9.4 of the Plan (including for this purpose the value of the Unsecured Liquidation Trust Assets) shall be used consistently by all parties (including the KWK Trustee and the appropriate class of Liquidation Trust Beneficiaries) for all federal income tax purposes.

8.5 Expedited Determination of Taxes. The KWK Trustee may request an expedited determination of taxes of the Debtors or the Liquidation Trust, including any Disputed Claims reserve, under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Debtors or the Liquidation Trust for all taxable periods through the dissolution of the Liquidation Trust.

## **ARTICLE IX DISSOLUTION**

9.1 Dissolution of Liquidation Trust. The Liquidation Trust shall be dissolved, in accordance with this section and at such time as (i) all of the Liquidation Trust Assets have been distributed pursuant to the Plan and this Agreement, (ii) the KWK 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 KWK Trustee under the Plan and this Agreement have been made; provided, however, that in no event shall the Liquidation Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court determines that a fixed period extension (not to exceed two (2) 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 KWK Trustee determines, in reliance upon such professionals as the KWK 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 KWK 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 KWK Trustee, and (iii) dissolve the Liquidation Trust.

## **ARTICLE X AMENDMENT AND WAIVER**

10.1 Amendment; Waiver.

(a) The KWK Trustee, with the prior approval of the majority of the members of the Trust Advisory Board, and upon the consent of the Unsecured Advisory Group to the extent any amendment, supplement or waiver effects provisions applicable to unsecured Claims and/or the Unsecured Liquidation Trust Assets, may amend, supplement, or waive any provision of this Agreement without notice to or the consent of any Liquidation Trust Beneficiary or the approval

of the Bankruptcy Court: (i) to cure any ambiguity, omission, defect or inconsistency in this Agreement; provided, that such amendments, supplements or waivers shall not adversely affect the distributions to be made under this Agreement to any of the Liquidation Trust Beneficiaries, or adversely affect the U.S. federal income tax status of the Liquidation Trust as a “liquidating trust”; (ii) to comply with any requirements in connection with the U.S. Federal income tax status of the Liquidation Trust as two separate “liquidating trusts”; (iii) to comply with any requirements in connection with maintaining that the Liquidation Trust is not subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act; (iv) to make the Liquidation Trust a reporting entity and, in such event, to comply with or seek relief from any requirements in connection with satisfying the registration or reporting requirements of the Exchange Act or the Investment Company Act; and (v) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Agreement and the Plan.

(b) Any substantive provision of this Agreement may be amended or waived by the KWK Trustee, subject to the prior approval of a majority of the members of the Trust Advisory Board, and upon consent of the Unsecured Advisory Group, with the approval of the Bankruptcy Court upon notice and an opportunity for a hearing; provided, however, that no change may be made to this Agreement that would adversely affect the distributions to be made under this Agreement to any of the Liquidation Trust Beneficiaries, or adversely affect the U.S. Federal income tax status of the Liquidation Trust as two separate “liquidating trusts.” Notwithstanding this Section 10.1, any amendments to this Agreement shall not be inconsistent with the purpose and intention of the Liquidation Trust to liquidate in an expeditious but orderly manner the Liquidation Trust Assets in accordance with Treasury Regulation Section 301.7701-4(d).

## **ARTICLE XI MISCELLANEOUS PROVISIONS**

11.1 Intention of Parties to Establish Grantor Trust. This Agreement is intended to create two grantor trusts with respect to the Liquidation Trust Beneficiaries for United States federal income tax purposes, one trust for the benefit of the Second Lien Liquidation Trust Beneficiaries and one trust for the benefit of the Unsecured Liquidation Trust Beneficiaries, and, to the extent provided by law, shall be governed and construed in all respects as separate grantor trusts with respect to the Liquidation Trust Beneficiaries.

11.2 Preservation of Privilege. In connection with the Liquidation Trust Causes of Action, any applicable privilege or immunity of the Debtors (or Debtors), including but not limited to any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral), and all defenses, claims, counterclaims, and rights of setoff or recoupment shall vest in the Liquidation Trust and may be asserted by the KWK Trustee. Notwithstanding the Debtors’ providing any privileged information to the KWK Trustee, the Liquidation Trust, or any party or person associated with the Liquidation Trust, such privileged information shall remain privileged. The Liquidation Trust shall have no right to waive the attorney-client privilege, work product, or other protection or immunity of any information received from the Debtors. The Debtors retain the right to waive their own privileges or immunities.

11.3 Debtors' Cooperation and Supply of Information and Documentation. Upon written request from the KWK Trustee, the Debtors shall provide commercially reasonable cooperation, and shall supply at the Liquidation Trust's sole expense and subject to confidentiality protections reasonably acceptable to the Debtors, all reasonable information, books, records, and documentation, to the KWK Trustee that is required to promptly, diligently, and effectively evaluate, file, prosecute, and settle the Liquidation Trust Causes of Action. Additionally, upon request by the KWK Trustee, the Debtors shall use commercially reasonable efforts to make available personnel with information relevant to the Liquidation Trust Causes of Actions.

11.4 Prevailing Party. If the KWK Trustee or the Liquidation Trust, as the case may be, is the prevailing party in a dispute regarding the provisions of this Agreement or the enforcement thereof, the KWK Trustee or the Liquidation Trust, as the case may be, shall be entitled to collect any and all costs, expenses, and fees, including attorneys' fees, from the nonprevailing party incurred in connection with such dispute or enforcement action.

11.5 Laws as to Construction. This Agreement shall be governed by and construed in accordance with the laws of the [State of New York], without giving effect to rules governing the conflict of law which would require the application of the law of another jurisdiction. In the event of any conflict between the terms of this Agreement and the Plan, the Plan shall control. To the maximum extent allowed by law, the Bankruptcy Court shall have exclusive jurisdiction of matters arising out of or in connection with this Agreement.

11.6 Severability. If any provision of this Agreement or application thereof to any person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

11.7 Notices. Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person for whom such notice is intended at such address as set forth below or such other address as filed with the Bankruptcy Court:

If to the Trust Advisory Board, the Unsecured Advisory Group, or the KWK Trustee:

If to the KWK Trustee, then to:

PIRINATE Consulting Group, LLC  
5 Canoe Brook Drive  
Livingston, New Jersey 07039  
Attn: Eugene I. Davis  
Email: genedavis@pirinateconsulting.com

with a copy (which shall not constitute notice) to:

Akin Gump Strauss Hauer & Feld LLP  
1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201  
Attn: Sarah Link Schultz  
Email: sschultz@akingump.com

and

Mannon Consulting LLC  
PO Box 1564  
West Chester, OH 45071-1564  
Attn: Lois Mannon  
Email: manager@mannonconsult.com

If to Members of the Trust Advisory Board, then to each of:

Monarch Alternative Capital  
535 Madison Avenue  
New York, NY 10022  
Attn: Joseph Citarrella  
Email: Joseph.Citarrella@monarchlp.com

and

Panning Capital Management  
510 Madison Avenue, #2600  
New York, NY 10022  
Attn: Rayan Joshi  
Email: rayan@panning.com

If to the Member of the Unsecured Advisory Group, then to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Attn: Andrew N. Rosenberg  
Email: arosenberg@paulweiss.com

11.8 Notices if to a Liquidation Trust Beneficiary. Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person for whom such notice is intended to the name and address set forth in the case of a Liquidation Trust Beneficiary, on the Debtors' Schedules or such Liquidation Trust Beneficiary's proof of claim,

such other notice filed with the Bankruptcy Court and the Liquidation Trust or such other means reasonably calculated to apprise the Liquidation Trust Beneficiary.

11.9 Headings. The section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or any term or provision hereof.

11.10 Actions Taken on Other Than Business Day. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

## **ARTICLE XII UNSECURED ADVISORY GROUP**

### 12.1 Unsecured Advisory Group

(a) The Unsecured Advisory Group shall be comprised one (1) to three (3) members initially selected by the Creditors' Committee. The Unsecured Advisory Group shall have the authority and responsibility to oversee, review, and guide the activities and performance of the Liquidation Trust solely with respect to the Unsecured Liquidation Trust Assets and the Claims reconciliation process with respect to Distributable General Unsecured Claims. Without limiting the foregoing, in addition to the other powers and duties of the Unsecured Advisory Group set forth separately in the Plan or this Agreement, the Unsecured Advisory Group shall have the authority at any meeting of the Unsecured Advisory Group, in each case solely with respect to the Unsecured Liquidation Trust Assets and the Claims reconciliation process with respect to Distributable General Unsecured Claims, to (i) make any determination in accordance with this Agreement with respect to or restriction on the use or disposition of Unsecured Liquidation Trust Assets, and (ii) vote with respect to an amendment of this Agreement pursuant to Section 10.1 of this Agreement. The KWK Trustee shall consult with and provide information to the Unsecured Advisory Group.

(b) Notwithstanding anything in this Article XII, the Unsecured Advisory Group shall not take any action which will cause the Liquidation Trust to fail to qualify as two separate "liquidating trusts" for U.S. federal income tax purposes.

### 12.2 Manner of Acting

(a) A majority of the total number of members of the Unsecured Advisory Group then in office shall constitute a quorum for the transaction of business at any meeting of the Unsecured Advisory Group. The affirmative vote of a majority of the members of the Unsecured Advisory Group present at a meeting at which a quorum is present shall be the act of the Unsecured Advisory Group except as otherwise required by law or as provided in this Agreement. Any or all of the members of the Unsecured Advisory Group may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe

the arrangements (rather than or in addition to the place) for the holding thereof. Any member of the Unsecured Advisory Group participating in a meeting by this means is deemed to be present in person at the meeting.

(b) Any member of the Unsecured Advisory Group who is present at a meeting of the Unsecured Advisory Group when action is taken is deemed to have assented to the action taken unless: (i) such member of the Unsecured Advisory Group objects at the beginning of the meeting (or promptly upon his/her arrival) to holding it or transacting business at the meeting; or (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice of his/her dissent or abstention to the Unsecured Advisory Group before its adjournment. The right of dissent or abstention is not available to any member of the Unsecured Advisory Group who votes in favor of the action taken.

12.3 Unsecured Advisory Group's Action Without a Meeting. Any action required or permitted to be taken by the Unsecured Advisory Group at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the Unsecured Advisory Group as evidenced by one or more written consents describing the action taken, signed by the Unsecured Advisory Group and filed with the minutes or proceedings of the Unsecured Advisory Group.

12.4 Tenure, Removal, and Replacement of the members of the Unsecured Advisory Group. The authority of the members of the Unsecured Advisory Group will be effective as of the Effective Date and will remain and continue in full force and effect until the Liquidation Trust is dissolved in accordance with Section 9.1. The service of the members of the Unsecured Advisory Group will be subject to the following:

(a) The members of the Unsecured Advisory Group will serve until death or resignation pursuant to subsection (b) below, or removal pursuant to subsection (c) below;

(b) A member of the Unsecured Advisory Group may resign at any time by providing a written notice of resignation to the remaining members of the Unsecured Advisory Group. Such resignation will be effective when a successor is appointed as provided herein;

(c) The members of the Unsecured Advisory Group may be removed, and in the event of a vacancy in such member's position (whether by removal, death or resignation) a new member may be appointed, by the unanimous vote of the remaining members of the Unsecured Advisory Group. The appointment of a successor member of the Unsecured Advisory Group will be evidenced by the filing with the Bankruptcy Court of a notice of appointment, which notice will include the name, address, and telephone number of the successor member of the Unsecured Advisory Group;

(d) Immediately upon appointment of any successor member of the Unsecured Advisory Group, all rights, powers, duties, authority, and privileges of the predecessor member of the Unsecured Advisory Group hereunder will be vested in and undertaken by the successor member of the Unsecured Advisory Group without any further act; and the successor member of the Unsecured Advisory Group will not be liable personally for any act or omission of the predecessor member of the Unsecured Advisory Group.

12.5 Out-of-Pocket Expenses. Each member of the Unsecured Advisory Group shall be entitled to reimbursement by the KWK Trustee from Unsecured Liquidation Trust Assets for actual, reasonable out-of-pocket fees and expenses incurred in their capacity as a member of the Unsecured Advisory Group (which shall not include legal or other professional advisors). Except as provided for in this Section 12.5, the members of the Unsecured Advisory Group shall not be entitled to receive any other form of compensation.

12.6 Liability of Unsecured Advisory Group. Except as otherwise specifically provided herein, the members of the Unsecured Advisory Group shall not be held personally liable for any claim asserted against any such Person, the Liquidation Trust, the KWK Trustee, the KWK Trustee's employees, the Liquidation Trust's employees, or any of the KWK Trustee's or Liquidation Trust's professionals or representatives. Without limiting the generality of the foregoing, the members of the Unsecured Advisory Group shall not be liable for any error of judgment made in good faith, or with respect to any action taken or omitted to be taken in good faith, except to the extent that the action taken or omitted to be taken by is determined by a Final Order of the Bankruptcy Court to be due to their own respective intentional breach of this Agreement, gross negligence, or willful misconduct.

12.7 Exculpation; Indemnification. The members of the Unsecured Advisory Group shall be and hereby are exculpated by all Persons, from any and all claims, causes of action, and other assertions of liability arising out of the discharge of the powers and duties conferred upon such members of the Unsecured Advisory Group by the Plan, this Agreement, or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or applicable law or otherwise, except for actions or omissions to act that are determined by Final Order of the Bankruptcy Court to be due to their own respective intentional breach of this Agreement, gross negligence, or willful misconduct after the Effective Date. No Liquidation Trust Beneficiary or other party in interest will have or be permitted to pursue any claim or cause of action against the members of the Unsecured Advisory Group for making or authorizing payments in accordance with the Plan or for implementing the provisions of the Plan. To the fullest extent permitted by applicable law, the Liquidation Trust shall, from the Unsecured Liquidation Trust Assets (i) indemnify, defend, and hold harmless the members of the Unsecured Advisory Group from and against any and all of their actions or inactions in their capacities as such, except for actions or inactions involving willful misconduct or gross negligence and (ii) reimburse the members of the Unsecured Advisory Group for fees and expenses incurred in defending any and all of their respective actions or inactions in their capacities as such, except for actions or inactions involving willful misconduct or gross negligence. Any action taken or omitted to be taken with the express approval of the Bankruptcy Court will conclusively be deemed not to constitute gross negligence or willful misconduct.

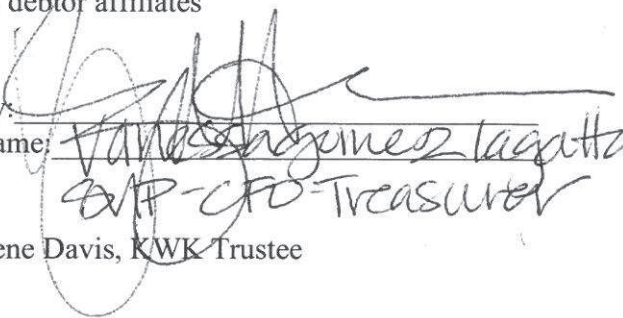
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IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as the date of the first above written.

Quicksilver Resources Inc., on behalf of itself and its debtor affiliates

By: \_\_\_\_\_

Name: \_\_\_\_\_

  
Gene Davis  
VP - CFO - Treasurer

Gene Davis, KWK Trustee

By: \_\_\_\_\_

Name: \_\_\_\_\_




IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as the date of the first above written.

Quicksilver Resources, Inc., on behalf of itself and its debtor affiliates

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Gene Davis, KWK Trustee

By:  \_\_\_\_\_  
Name: \_\_\_\_\_