

2009 CarswellAlta 1269, 2009 ABQB 490, [2009] A.W.L.D. 3785, 57 C.B.R. (5th) 205

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San Francisco Gifts Ltd., Re (2004), 5 C.B.R. (5th) 92, 42 Alta. L.R. (4th) 352, 2004 ABQB 705, 2004 CarswellAlta 1241, 359 A.R. 71 (Alta. Q.B.) — referred to

San Francisco Gifts Ltd., Re (2004), 2004 ABCA 386, 2004 CarswellAlta 1607, 5 C.B.R. (5th) 300, 42 Alta. L.R. (4th) 371, 361 A.R. 220, 339 W.A.C. 220 (Alta. C.A.) — considered

SemCanada Crude Co., Re (2009), 2009 CarswellAlta 167, 2009 ABQB 90, 52 C.B.R. (5th) 131 (Alta. Q.B.) — referred to

Sklar-Peppler Furniture Corp. v. Bank of Nova Scotia (1991), 1991 CarswellOnt 220, 8 C.B.R. (3d) 312, 86 D.L.R. (4th) 621 (Ont. Gen. Div.) — considered

Stelco Inc., Re (2005), 2005 CarswellOnt 6818, 204 O.A.C. 205, 78 O.R. (3d) 241, 261 D.L.R. (4th) 368, 11 B.L.R. (4th) 185, 15 C.B.R. (5th) 307 (Ont. C.A.) — considered

Woodward's Ltd., Re (1993), 20 C.B.R. (3d) 74, 84 B.C.L.R. (2d) 206, 1993 CarswellBC 555 (B.C. S.C.) — considered

#### **Statutes considered:**

*Bankruptcy Code*, 11 U.S.C.

s. 503(b)(9) — referred to

Chapter 7 — referred to

Chapter 11 — referred to

*Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36

Generally — referred to

s. 6 — referred to

s. 11(1) — referred to

s. 22(2) [rep. & sub. 2007, c. 36, s. 71] — referred to

APPLICATION for orders authorizing establishment of single class of creditors for three plans to restructure and distribute assets for purpose of considering and voting on plans.

**B.E. Romaine J.:**

### **Introduction**

1 The SemCanada Group applied for various relief related to the holding of meetings of creditors to consider three plans to restructure and distribute assets of the CCAA applicants, including applications for orders authorizing the establishment of a single class of creditors for each plan for the purpose of considering and voting on the plans. I granted the applications, and these are my reasons.

### **Relevant Facts**

2 On July 22, 2008, SemCanada Crude Company ("SemCanada Crude") and SemCAMS ULC ("SemCAMS") were granted initial Orders pursuant to s. 11(1) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "CCAA").

3 On July 30, 2008, the CCAA proceedings of SemCAMS and SemCanada Crude and the bankruptcy proceedings of SemCanada Energy Company ("SemCanada Energy") A.E. Sharp Ltd. ("AES") and CEG Energy Options, Inc. ("CEG") which had been commenced on July 24, 2008 were procedurally consolidated for the purpose of administrative convenience.

4 In addition, CCAA protection was granted to two affiliated companies, 3191278 Nova Scotia Company (A319") and 1380331 Alberta ULC ("138"). SemCanada Energy, AES, CEG, 319 and 138 are collectively referred to as the "SemCanada Energy Companies". The CCAA applicants are collectively referred to as the "SemCanada Group".

5 On July 22, 2008, SemGroup L.P. and its direct and indirect subsidiaries in the United States (the "U.S. Debtors") filed voluntary petitions to restructure under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

6 According to the second report of the Monitor, the financial problems of the SemGroup arose from a failed trading strategy and the volatility of petroleum products prices, leading to material margin calls related to large futures and options positions on the NYMEX and OTC markets, resulting in a severe liquidity crisis. SemGroup's credit facilities were insufficient to accommodate its capital needs, and the corporate group sought protection under Chapter 11 and the CCAA.

7 The SemCanada Group are indirect, wholly-owned subsidiaries of SemGroup LP. The SemCanada Group is comprised of three separate businesses:

(a) SemCanada Crude, a crude oil marketing and blending operation;

(b) the SemCanada Energy Companies, whose business was gas marketing, including the purchase and sale of gas to certain of its four subsidiaries as well as to SemCAMS; and

(c) SemCAMS, whose business consists of ownership interests in large gas processing facilities located in Alberta, as well as agreements to operate these facilities.

8 SemCrude, L.P. as U.S. borrower and a predecessor company of SemCAMS as Canadian borrower, certain U.S. SemGroup corporations and Bank of America as administrative agent for a syndicate of lenders (the "Secured Lenders") entered into a credit agreement in 2005 (the "Credit Agreement"). The Credit Agreement provides four different credit facilities. There are no advances outstanding with respect to the Canadian term loan facility, but in excess of U.S. \$2.9 billion is owing under the U.S. term loan facility, the working capital loan facility and the revolver loan.

9 Five of the SemCanada Group, including SemCanada Crude, SemCanada Energy and SemCAMS, have provided a guarantee of all obligations under the Credit Agreement to the Secured Lenders, who rank as senior secured lenders, and under a US \$600 million bond indenture issued by SemGroup. The guarantee is secured by a security and pledge agreement (the "Security Agreement") signed by the five members of the SemCanada Group.

10 The SemCanada Energy Companies were liquidated or have ceased operations and no longer have significant ongoing operations. As a result of liquidation proceedings and the collection of outstanding accounts receivable, the SemCanada Energy Companies hold approximately \$113 million in cash. An application to distribute that cash to the Secured Lenders was adjourned *sine die* on January 19, 2009: *SemCanada Crude Co., Re, 2009 ABQB 90* (Alta. Q.B.).

11 Originally, SemCAMS and SemCanada Crude proposed to restructure their businesses as stand-alone operations without further affiliation with the U.S. Debtors and accordingly sought bids in a solicitation process undertaken in early 2009. Unfortunately, no acceptable bids were received. It also became apparent that, as SemCanada Crude's business was closely integrated with certain North Dakota transportation rights and assets owned by the U.S. Debtors, restructuring SemCanada Crude's operations on a stand alone basis would be problematic. The SemCanada Group turned to the alternative of joining in the restructuring of the entire SemGroup through concurrent and integrated plans of arrangement in both Canada and the United States.

### **Summary of the U.S. and Canadian Plans**

12 The U.S. and Canadian plans are complex and need not be described in their entirety in these reasons. For the purpose of these reasons, the relevant aspects of the plans are as follows:

1. The disclosure statement relating to a joint plan of affiliated U.S. Debtors was approved for distribution to creditors by the U.S. Bankruptcy Court on July 21, 2009. Under the Chapter 11 process, meetings of creditors are not necessary. Voting takes place through a notice and balloting mechanism that has been approved by the U.S. Court and September 3, 2009 has been set as the voting deadline for acceptance or rejection of the

U.S. plan.

2. The total distributable value of the SemGroup for the purpose of the plans is expected to be US \$2.3 billion, consisting of US \$965 million in cash, US \$300 million in second lien term loan interests and US \$1.035 billion in new common stock and warrants of the U.S. Debtors.
3. The SemCanada Group will contribute approximately US \$161 million in available cash to the U.S. plan and US \$54 million is expected to be received from SemCanada Crude relating to crude oil settlements that will occur after the effective date of the plans, being cash received from prepayments that are outstanding on the implementation date which will be replaced with letters of credit or other post-plan financing.
4. Approximately US \$50 million will be retained by the corporate group for working capital and general corporate purposes, including for the post plan cash needs of SemCAMS and SemCanada Crude.
5. Certain U.S. causes of action will be contributed to a "litigation trust" and will be distributed through the U.S. Plan, including to the Secured Lenders on their deficiency claims. No value has been placed on the litigation trust by the U.S. Debtors. The Monitor reports that it is unable to make an informed assessment of the value of the litigation trust assets as the trust is a complicated legal mechanism that will likely require the expenditure of significant time and professional fees before there will be any recovery.
6. The U.S. plan contains a condition precedent that, on the effective date of the plan, the restructured corporate group will enter into a US \$500 million exit financing facility, which will apply to all post-restructuring affiliates, including SemCAMS and SemCanada Crude, and which will allow the corporate group to re-enter the crude marketing business in the United States and to continue operations in Canada.
7. It is expected that the Secured Lenders will receive cash, second lien term loan interests and equity in priority to unsecured creditors on their secured guarantee claims of US \$2.9 billion, which will leave them with a deficiency of approximately US \$1.07 billion on the secured loans. The Secured Lenders are entitled under the U.S. Plan to a share in the litigation trust on their deficiency claim. If certain other classes of creditors do not vote to approve the U.S. plan, the Secured Lenders may also receive equity of a value up to 4.53% of their deficiency, subject to other contingencies. The Monitor reports that the Secured Lenders are thus estimated to recover approximately 57.1% of their estimated claims of US \$2.1 billion on secured working capital claims and 73.3% of their estimated claims of US \$811 million on secured revolver/term claims. The Monitor estimates that the Secured Lenders will recover no value on their deficiency claims, assuming no reallocation of equity from other categories of debtors and no value for the litigation trust.

8. The holders of the US \$600 million bonds (the "Noteholders") are entitled to receive common shares and warrants in the restructured corporate group, plus an interest in the litigation trust and certain trustee fees, for an estimated recovery of 8.34% on their claims of US \$610 million under the U.S. plan, assuming all classes of Noteholders approve the plan and no value is given to the litigation trust. Depending on certain contingencies, the range of recovery is 0.44% to 11.02% of their claim. Noteholders are treated more advantageously under the plans than general unsecured creditors in recognition that the Senior Notes are jointly and severally guaranteed by 23 U.S. debtors and the Canadian debtors, while in most instances only one SemGroup debtor is liable with respect to each ordinary unsecured creditor. In addition, the Noteholders have waived their right to receive distributions under the Canadian plans.

9. Under the U.S. Plan, general unsecured creditors will receive common shares, warrants and an interest in the litigation trust. Depending on the level of approval, recovery levels will range from 0.08% to 8.03% on claims of US \$811 million. The Monitor reports that it expects recovery to general unsecured creditors under the U.S. Plan to be 2.09% of their claim.

10. Pursuant to section 503(b)(9) of the U.S. Bankruptcy Code, entities that provided goods to the U.S. Debtors in the ordinary course of business that were received within 20 days of the filing of Chapter 11 proceedings are entitled to a priority claim that ranks above the claims of the Secured Lenders.

11. There are 3 Canadian plans. As the Secured Lenders will be entitled to some recovery in respect of their deficiency claim and the Noteholders will be entitled to some recovery on their unsecured claim under the U.S. Plan, the Secured Lenders and the Noteholders are deemed to have waived their rights to any additional recovery under the Canadian plans for the most part. However, the votes of the Secured Lenders and the Noteholders entitled to vote on the U.S. Plan are deemed to be votes for the purpose of the Canadian plans, both with respect to numbers of parties and value of claims, and are to be included in the single class of "Affected Creditors" entitled to vote on the Canadian plans. Originally, the Canadian plans provided that the value attributable to the Secured Lenders' votes would be based on the full amount of their guarantee claim, approximately US \$2.9 billion, and not only on their deficiency claim of approximately US \$1.07 billion. Thus, the aggregate value of the Secured Lenders' voting claims would be:

- a) US \$2.939 billion for the SemCAMS plan;
- b) US \$2.939 billion less C \$145 million for the SemCanada Crude plan, recognizing that the Secured Lenders would be entitled to receive C \$145 million in respect of a negotiated Lenders' Secured Claim under the SemCanada Crude plan; and
- c) US \$2.939 billion less C \$108 million for the SemCanada Energy plan, recognizing

that the Secured Lenders will receive that amount in respect of a negotiated Lenders' Secured Claim under the SemCanada Energy plan.

At the conclusion of the classification hearing, the CCAA applicants proposed a revision to the proposed orders which stipulates that, if the approval of a plan by the creditors would be determined by the portion of the votes cast by the Secured Lenders that represents an amount of indebtedness that is greater than their estimated aggregate deficiency after taking into consideration the payments they are to receive under the U.S. plan and the Canadian plans, the Court shall determine whether the voting claim of the Secured Lenders should be limited to their estimated deficiency claim.

12. Only "Ordinary Creditors" receive any distribution under the Canadian Plans. Ordinary Creditors are defined as creditors holding "Affected Claims" other than the Secured Lenders, Noteholders, CCAA applicants and U.S. Debtors. Each plan provides that the Affected Creditors of the CCAA applicant will vote at the Creditors' Meeting as a single class.

13. The SemCAMS plan will be funded by a cash advance from SemCanada Crude and establishes two pools of cash. One pool will fund the full amount of secured claims which have not been paid prior to the implementation date of the plan up to the realizable value of the property secured, and the other pool will fund distributions to ordinary unsecured creditors. Ordinary unsecured creditors will receive cash subject to a maximum total payment of 4% of their proven claims. The Monitor estimates that the distribution will equal 4% of claims unless claims in excess of the current highest estimate are established.

14. The SemCanada Crude plan also establishes two pools of cash, one for secured claims and one for ordinary unsecured creditors. Again, the distribution to ordinary unsecured creditors is estimated to be 4% of claims unless claims in excess of the current highest estimate against SemCanada Crude are established.

15. Any cash remaining in SemCanada Crude after deducting amounts necessary to fund the above-noted payments to secured and unsecured ordinary creditors of SemCAMS and SemCanada Crude, unaffected claims and administrative costs, less a reserve for disputed claims, will be paid to the Secured Lenders through the U.S. plan as part of the payment on secured debt.

16. The SemCanada Energy distribution plan is funded from the cash received from the liquidation of the assets of the companies. It also establishes two pools of cash, one of which will be used to pay secured ordinary creditors and a one of which will be used to pay cash distributions to ordinary unsecured creditors. The Monitor estimates that the distribution to ordinary unsecured creditors will be in the range of 2.16% to 2.27% of their claims, unless claims in excess of the current maximum estimate are established. Any amounts outstanding after payment of these claims, unaffected claims and administration

costs will be paid to the Secured Lenders. The proposed lower amount of recovery is stated to be in recognition of the fact that the SemCanada Energy Companies have been liquidated and have no going concern value.

17. As this summary indicates, the U.S. Plan and the Canadian plans are closely integrated and economically interdependent. Each of the plans requires that the other plans be approved by the requisite number of creditors and implemented on the same date in order to become effective. The receipt of at least \$160 million from the SemCanada Group is a condition precedent to the implementation of the U.S. Plan.

18. The Monitor reports that the SemCanada Group has indicated that there is no viable option to the proposed plans and that a formal liquidation under bankruptcy legislation would provide a lower recovery to creditors. The Monitor notes that the rationale for the treatment of the Secured Lenders and the ordinary unsecured creditors under the plans is that the Secured Lenders have valid and enforceable secured claims, and that, in the event of the liquidation of the Canadian companies, the Secured Lenders would be entitled to all proceeds, resulting in no recovery to ordinary creditors. Therefore, reports the Monitor, the CCAA plans are considered to be better than the alternative of a liquidation. The Secured Lenders derive some benefit from the plans through the preservation of the going concern value of SemCAMS and SemCanada Crude and by having a prompt distribution of funds held by the SemCanada Energy Companies.

19. The Monitor notes that the distribution to the SemGroup unsecured creditors under the U.S. plan is viewed as better than a liquidation, and that, therefore, given the effect of the U.S. Bankruptcy Code's "cram-down" provisions, it is likely that the U.S. plan will be confirmed. The Monitor comments that the proposed distribution to ordinary unsecured creditors under the CCAA plans is considered to be fair as it is comparable to and potentially slightly more favourable than the distributions being made to the U.S. ordinary unsecured creditors.

### **Positions of Various Parties**

#### **13 The SemCanada Group applied for orders**

- a) accepting the filing of, in the case of SemCAMS and SemCanada Crude, proposed plans of arrangement and compromise, and in the case of SemCanada Energy, a proposed plan of distribution;
- b) authorizing the calling and holding of meetings of the Canadian creditors of these three CCAA applicants;
- c) authorizing the establishment of a single class of creditors for each plan for the purpose of considering and voting on the plans;

2009 CarswellAlta 1269, 2009 ABQB 490, [2009] A.W.L.D. 3785, 57 C.B.R. (5th) 205

d) approving procedures with respect to the calling and conduct of such meetings; and

e) other non-contentious enabling relief.

14 Certain unsecured creditors of the applicants objected to the proposed classification of creditors, submitting that the Secured Lenders should not be allowed a vote in the same class as the unsecured creditors either with respect to the secured portion of their overall claim or any deficiency in their claims that would remain unpaid, and that the Noteholders should not be allowed a vote in the same class as the rest of the unsecured creditors.

15 As noted previously, the CCAA applicants proposed a revision to the proposed orders at the conclusion of the classification hearing which would allow the Court to consider whether the voting claim of the Secured Lenders should be limited to their estimated deficiency claim. The objecting creditors continued to object to the proposed classification, even if eligible votes were limited to the deficiency claim of the Secured Lenders.

### Analysis

16 Section 6 of the CCAA provides that, where a majority in number representing two-thirds in value of "the creditors or class of creditors, as the case may be" vote in favour of a plan of arrangement or compromise at a meeting or meetings, the plan of arrangement may be sanctioned by the Court. There is little by way of specific statutory guidance on the issue of classification of claims, leaving the development of this issue in the CCAA process to case law. Prior decisions have recognized that the starting point in determining classification is the statute itself and the primary purpose of the statute is to facilitate the reorganization of insolvent companies: Paperny, J. in *Canadian Airlines Corp., Re* (2000), 20 C.B.R. (4th) 46 (Alta. C.A. [In Chambers]), leave to appeal refused (2000), 20 C.B.R. (4th) 46 (Alta. C.A. [In Chambers]), affirmed [2001] 4 W.W.R. 1 (Alta. C.A.), leave to appeal to SCC refused [2001] S.C.C.A. No. 60 (S.C.C.) at para. 14. As first noted by Forsyth, J. in *Norcen Energy Resources Ltd. v. Oakwood Petroleum Ltd.* (1988), 72 C.B.R. (N.S.) 20, 64 Alta. L.R. (2d) 139, [1989] 2 W.W.R. 566 (Alta. Q.B.) at page 28, and often repeated in classification decisions since, "this factor must be given due consideration at every stage of the process, including the classification of creditors..."

17 Classification is a key issue in CCAA proceedings, as a proposed plan must achieve the requisite level of creditor support in order to proceed to the stage of a sanction hearing. The CCAA debtor seeks to frame a class or classes in order to ensure that the plan receives the maximum level of support. Creditors have an interest in classifications that would allow them enhanced bargaining power in the negotiation of the plan, and creditors aggrieved by the process may seek to ensure that classification will give them an effective veto (see *Rescue: The Companies' Creditors Arrangement Act*, Janis P. Sarra, 2007 ed. Thomson Carswell at page 234). Case law has developed from the comments of the British Columbia Court in *Woodward's Ltd., Re* (1993), 84 B.C.L.R. (2d) 206 (B.C. S.C.) warning against the danger of fragmenting the voting process un-



2009 CarswellAlta 1269, 2009 ABQB 490, [2009] A.W.L.D. 3785, 57 C.B.R. (5th) 205

necessarily, through the identification of principles applicable to the concept of "commonality of interest" articulated in *Canadian Airlines Corp., Re* and elaborated further in Alberta in *San Francisco Gifts Ltd., Re*, 2004 CarswellAlta 1241, [2004] A.J. No. 1062 (Alta. Q.B.), leave to appeal refused (2004), 5 C.B.R. (5th) 300 (Alta. C.A.).

18 The parties in this case agree that "commonality of interest" is the key consideration in determining whether the proposed classification is appropriate, but disagree on whether the plans as proposed with their single class of voters meet that requirement. It is clear that classification is a fact-driven inquiry, and that the principles set out in the case law, while useful in considering whether commonality of interest has been achieved by the proposed classification, should not be applied rigidly: *Canadian Airlines Corp., Re* at para. 18; *San Francisco Gifts Ltd., Re* at para. 12; *Stelco Inc., Re* (2005), 15 C.B.R. (5th) 307 (Ont. C.A.) at para. 22.

19 Although there are no fixed rules, the principles set out by Paperny, J. in para. 31 of *Canadian Airlines Corp., Re* provide a useful structure for discussion of whether the proposed classification is appropriate:

***1. Commonality of interest should be viewed based on the non-fragmentation test, not on the identity of interest test.***

20 Under the now-rejected "identity of interest" test, all members of the class had to have identical interests. Under the non-fragmentation test, interests need not be identical. The interests of the creditors in the class need only be sufficiently similar to allow them to vote with a common interest: *Woodward's Ltd., Re* at para. 8.

21 The objecting creditors submit that the creation of two classes rather than one cannot be considered to be fragmentation. The issue, however, is not the number of classes, but the effect that fragmentation of classes may have on the ability to achieve a viable reorganization. As noted by Farley, J. in para. 13 of his reasons relating to the classification of creditors in *Stelco Inc., Re*, as endorsed by the Ontario Court of Appeal:

...absent valid reason to have separate classes it would be reasonable, logical, rational and practical to have all this unsecured debt in the same class. Certainly that would avoid fragmentation - and in this respect multiplicity of classes does not mean that fragmentation starts only when there are many classes. Unless more than one class is necessary, fragmentation would start at two classes. Fragmentation if necessary, but not necessarily fragmentation.

***2. The interests to be considered are the legal interests that a creditor holds qua creditor in relationship to the debtor company prior to and under the plan as well as on liquidation.***

22 The classification of creditors is viewed with respect to the legal rights they hold in relation to the debtor company in the context of the proposed plan, as opposed to their rights as creditors in relation to each other: *Woodward's Ltd., Re* at para. 27, 29; *Stelco Inc., Re* at para. 30. In the

2009 CarswellAlta 1269, 2009 ABQB 490, [2009] A.W.L.D. 3785, 57 C.B.R. (5th) 205

proposed single classification, the rights of the creditors in the class against the debtor companies are unsecured (other than the proposed votes attributable to the secured portion of the debt of the Secured Lenders, which will be discussed separately).

23 With respect to the Secured Lenders' deficiency claim, there is a clear precedent for permitting a secured creditor to vote a substantial deficiency claim as part of the unsecured class: *Campeau Corp., Re* (1991), 10 C.B.R. (3d) 100 (Ont. Gen. Div.); *Canadian Airlines Corp., Re*, supra.

24 The classification issues in the *Campeau Corp., Re* restructuring were similar to the present issues. In *Campeau Corp., Re*, a secured creditor, Olympia & York, was included in the class of unsecured creditors for the deficiency in its secured claim, which represented approximately 88% of the value of the unsecured class. The Court rejected the submission that the legal interests of Olympia & York were different from other unsecured creditors in the class. Montgomery, J. noted at para. 16 that Olympic & York's involvement in the negotiation of the plan was necessary and appropriate given that the size of its claims would allow it a veto no matter how the classes were constituted and that its co-operation was necessary for the success of both the U.S. and Canadian plans.

25 In the same way, the size and scope of the Secured Lenders claim makes their participation in the negotiation and endorsement of the proposed plans essential. That participation does not disqualify them from a vote in the process, nor necessitate their isolation in a special class. While under the integrated plans, the Secured Lenders will receive a different kind of distribution on their unsecured deficiency claim (a share of the litigation trust), that is an issue of fairness for the sanction hearing and does not warrant the establishment of a separate class.

26 The interests of the Noteholders are unsecured. While it is true that under the integrated plans, the Noteholders would be entitled to a higher share of the distribution of assets than ordinary unsecured creditors, the rationale for such difference in treatment relates to the multiplicity of debtor companies that are indebted to the Noteholders, as compared to the position of the ordinary unsecured creditors. That difference, while it may be subject to submissions at the sanction hearing, is an issue of fairness, and not a difference material enough to warrant a separate class for the Noteholders in this case. A separate class for the Noteholders would only be necessary if, after considering all the relevant factors, it appeared that this difference would preclude reasonable consultation among the creditors of the class: *San Francisco Gifts Ltd., Re* at para. 24.

27 The question arises whether the fact that the Secured Lenders and the Noteholders have waived their rights to recover under the Canadian plans should result in either the requirement of separate classes or the forfeiture of their right to vote on the Canadian plans at all.

28 This is a unique case: a cross-border restructuring with separate but integrated and interdependent plans that are designed to comply with the restructuring legislation of two jurisdictions. As the applicants point out, the co-ordinated structure of the plans is designed to ensure that the Secured Lenders and the Noteholders receive sufficient recoveries under the U.S. plan to justify

the sacrifices in recovery that result from their waiver of distributions under the Canadian plans. In considering the context of the proposed classification, it would be unrealistic and artificial to consider the Canadian plans in isolation, without regard to the commercial outcome to the creditors resulting from the implementation of the plans in both jurisdictions. Thus, the fact that the distributions to Secured Lenders and Noteholders will take place through the operation of the U.S. plan, and that the effective working of the plans require them to waive their rights to receive distributions under the Canadian plans does not deprive them of the right to an effective voice in the consideration of the Canadian plans through a meaningful vote.

29 It is not sufficient to say that the Secured Lenders and the Noteholders have a vote in the U.S. plans. The "cram down" power which exists under Chapter 11 of the U.S. Bankruptcy Code includes a "best interests test" that requires that if a class of holders of impaired claims rejects the plan, they can be "crammed down" and their claims will be satisfied if they receive property of a value that is not less than the value that the class would receive or retain if the debtor were liquidated under Chapter 7 of the U.S. Bankruptcy Code. Thus, the votes available to the Secured Lenders and the Noteholders with respect to their claims under the U.S. Plan do not give them the right available to creditors under Canadian restructuring law to vote on whether a proposed plan should proceed to the next step of a sanction hearing. There is no reason to deprive the Secured Lenders and the Noteholders of that right as creditors of the Canadian debtors, even if the distributions they would be entitled to flow through the U.S. plan. The question becomes, then, whether that right should be exercised in a class with other unsecured creditors as proposed or in a separate class.

30 It is noteworthy that the proposed single classification does not have the effect of confiscating the legal rights of any of the unsecured creditors, or adversely affecting any existing security position. It is in fact arguable that seeking to exclude the Secured Lenders and the Noteholders from the class prejudices these similarly-placed creditors by denying them a meaningful voice in the approval or rejection of the plans in Canada.

31 A number of cases suggest that the Court should also consider the rights of the parties in liquidation in determining whether a proposed classification is appropriate: *Woodward's Ltd., Re* at para. 14; *San Francisco Gifts Ltd., Re* at para. 12.

32 Under a liquidation scenario, the Secured Lenders would be entitled to nearly all of the proceeds of the liquidated corporate group, other than the relatively few secured claims that have priority. This suggests that the Secured Lenders are entitled to a meaningful vote with respect to both the U.S. plan and the Canadian plans.

***3. The commonality of interests is to be viewed purposively, bearing in mind the object of the CCAA, namely to facilitate organizations if possible.***

***4. In placing a broad and purposive interpretation on the CCAA, the Court should be careful to resist classification approaches that would potentially jeopardize viable plans.***

2009 CarswellAlta 1269, 2009 ABQB 490, [2009] A.W.L.D. 3785, 57 C.B.R. (5th) 205

33 The Ontario Court of Appeal in Stelco Inc., Re cautioned that, in addition to considering commonality of interest issues, the court in a classification application should be alert to concerns about the confiscation of legal rights and should avoid "a tyranny of the minority", citing the comments of Borins, J. in Sklar-Peppler Furniture Corp. v. Bank of Nova Scotia (1991), 86 D.L.R. (4th) 621 (Ont. Gen. Div.), where he warned against creating "a special class simply for the benefit of the opposing creditor, which would give that creditor the potential to exercise an unwarranted degree of power": Stelco Inc., Re at para 28.

34 Excluding of the Secured Lenders and the Noteholders from the proposed single class would allow the objecting creditors to influence the voting process to a degree not warranted by their status. It is true that if the Secured Lenders and the Noteholders are not excluded from the class, even if only the votes related to the Secured Lenders' deficiency claim are tabulated, the positive vote will likely be enough to allow the proposed plans to proceed to a sanction hearing. It is also true that the Secured Lenders and the Noteholders may have been part of the negotiations that led to the proposed plans. Neither of those factors standing alone is sufficient to warrant a separate class unless rights are being confiscated or the classification creates an injustice.

35 The structure of the classification as proposed creates in effect what was imposed by the Court in Canadian Airlines Corp., Re, a method of allowing the "voice" of ordinary unsecured creditors to be heard without the necessity of a separate classification, thus permitting rather than ruling out the possibility that the plans might proceed to a sanction hearing. Given that the votes of the Secured Lenders and the Noteholders on the U.S. plan will be deemed to be votes of those creditors on the Canadian plans, there will be perforce a separate tabulation of those votes from the votes of the remaining unsecured creditors. In accordance with the revision to the plans made at the end of the classification hearing, there will be a separate tabulation of the votes of the Secured Lenders relating to the secured portion of their claims and the votes relating to the unsecured deficiency.

36 The situation in this classification dispute is essentially the same as that which faced Paperny, J. in Canadian Airlines Corp., Re. Fragmenting the classification prior to the vote raises the possibility that the plans may not reach the stage of a sanction hearing where fairness issues can be fully canvassed. This would be contrary to the purpose of the CCAA. This is particularly an issue recognizing that the U.S. plan and the Canadian plans must all be approved in order for any one of them to be implemented. Conrad, J.A. in denying leave to appeal in San Francisco Gifts Ltd., Re, 2004 ABCA 386 (Alta. C.A.) at para. 9 noted that the right to vote in a separate class and thereby defeat a proposed plan of arrangement is the statutory protection provided to the different classes of creditors, and thus must be determined reasonably at the classification stage. However, she also noted that "it is important to carefully examine classes with a view of protecting against injustice": para. 10. In this case, the goals of preventing confiscation of rights and protecting against injustice favour the proposed single classification.

37 This is the "pragmatic" factor referred to in Campeau Corp., Re at para. 21. The CCAA judge

2009 CarswellAlta 1269, 2009 ABQB 490, [2009] A.W.L.D. 3785, 57 C.B.R. (5th) 205

must keep in mind the interests of all stakeholders in reviewing the proposed classification, as in any step in the process. If a classification prevents the danger of a veto of a plan that promises some better return to creditors than the alternative of a liquidating insolvency, it should not be interfered with absent good reason. The classification hearing is not the only avenue of relief for aggrieved creditors. If a plan received the minimum required level of approval by vote of creditors, it must still be approved at a hearing where issues of fairness must be addressed.

***5. Absent bad faith, the motivations of the creditors to approve or disapprove [of the Plan] are irrelevant.***

38 As noted in *Canadian Airlines Corp., Re* at para. 35, fragmenting a class because of an alleged conflict of interest not based on legal rights is an error. The issue of the motivation of a party to vote for or against a plan is an issue for the fairness hearing. There is no doubt that the various affected creditors in the proposed single class may have differing financial or strategic interests. To recognize such differences at the classification stage, unless the proposed classification confiscates rights, results in an injustice or creates a situation where meaningful consultation is impossible, would lead to the type of fragmentation that may jeopardize the CCAA process and be counter-productive to the legislative intent to facilitate viable reorganizations.

***6. The requirement of creditors being able to consult together means being able to assess their legal entitlement as creditors before or after the plan in a similar manner.***

39 The issue of meaningful consultation was addressed by both the supervising justice and the Court of Appeal in *San Francisco Gifts Ltd., Re*. In that case, Topolniski, J. noted that two corporate insiders that the proposed plan had included in the classification of affected creditors held claims that were uncompromised by the plan, that they gave up nothing, and that it "stretches the imagination to think other creditors in the class could have meaningful consultation [with them] about the Plan": para. 49. Her decision to place these parties in a separate class was confirmed by the Court of Appeal, which commented that Topolniski, J. was "absolutely correct" to find no ability to consult "between shareholders whose debts would not be cancelled and other unsecured creditors whose debts would be": para. 14.

40 That is not the situation here. The deficiency claims of the Secured Lenders and the unsecured claims of the Noteholders are being compromised in the U.S. plan, and there is nothing to block consultations among affected creditors on the basis of dissimilarity of legal interests. While there are differences in the proposed distributions on the unsecured claims, they are not so major that they would preclude consultation.

41 The objecting creditors point to statements made by counsel for the Secured Lenders during the classification application about the alternatives to approval of the plans, which they submit indicates the impossibility of consultation. These comments were made in the context of advocacy on behalf of the proposed classification, and I do not take them as a clear statement by the Secured Lenders that they would refuse to consult with the other creditors.

### Secured Portion of Secured Lenders' Claim

42 The CCAA applicants and the Secured Lenders submit that it would be unfair and inappropriate to limit the votes of the Secured Lenders in the Canadian plans to the amount of the deficiency in their secured claim, rather than the entire amount owing under the guarantee. They argue that, by endorsing the plans, the Secured Lenders have in effect elected to treat their entire claim under the guarantee as unsecured with respect to the Canadian plans, except for relatively small negotiated secured claims under the SemCanada Crude plan and the SemCanada Energy plan. They also submit that the fact that under bankruptcy law, a creditor of a bankrupt debtor is entitled to prove for the full amount of its debt in the estates of both the debtor and a bankrupt guarantor of the debt justifies granting the Secured Lenders the right to vote the full amount of the guarantee claim, even if part of the claim is to be recovered through the U.S. plan, as long as they do not actually recover more than 100 cents on the dollar.

43 It became apparent during the course of the classification hearing that it may not matter whether the plans are approved by the requisite number of creditors and value of their claims if the Secured Lenders are only entitled to vote the deficiency portion of their claims or the full amount of their claims. It was this that led to the revision in the language of the voting provisions of the plans. I defer a decision on the question of whether or not the Secured Lenders are entitled to vote the entire amount of their guarantee claims until after the vote has been conducted and the votes separately tabulated as directed. As noted by the Court of Appeal in *Canadian Airlines Corp., Re* (2000), 19 C.B.R. (4th) 33 (Alta. C.A. [In Chambers]) at para. 39, such a deferral of a voting issue is not an error of law and is in fact consistent with the purpose of the CCAA.

### Recent Amendments

44 The following amendment to the CCAA that has been proclaimed in effect from September 18, 2009 sets out certain factors that may be considered in approving a classification for voting purposes:

22.2 (2) **Factors** - For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account:

- (a) the nature of the debts, liabilities or obligations giving rise to their claims;
- (b) the nature and rank of any security in respect of their claims;
- (c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

2009 CarswellAlta 1269, 2009 ABQB 490, [2009] A.W.L.D. 3785, 57 C.B.R. (5th) 205

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed. (R.S.C. 2005, c. 47, s. 131, amended R.S.C. 2007, Bill C -12, c.36, s.71)

45 These factors do not change in any material way the factors that have been identified in the case law and discussed in these reasons nor would they have a material effect on the consideration of the proposed classification in this case.

#### **Creditors with Claims in Process**

46 Two creditors advised that, because their claims of secured status had not yet been resolved with the applicants and the Monitor, they were not in a position to evaluate whether or not to object to the proposed classification. The plans were revised to ensure that the votes of creditors whose status as secured creditors remains unresolved until after the meetings of creditors be recorded with votes of creditors with disputed claims and reported to the Court by the Monitor if these votes affect the approval or non-approval of the plan in question.

#### **Conclusion**

47 In summary, I have concluded that there is no good reason to exclude the Secured Lenders and the Noteholders from the single classification of voters in the proposed plans, nor to create a separate class for their votes. There are no material distinctions between the claims of these two creditors and the claims of the remaining unsecured creditors that are not more properly the subject of the sanction hearing, apart from the deferred issue of whether the Secured Lenders are entitled to vote their entire guarantee claim. No rights of the remaining unsecured creditors are being confiscated by the proposed classification, and no injustice arises, particularly given the separate tabulation of votes which enables the voice of the remaining unsecured creditors to be heard and measured at the sanction hearing. There are no conflicts of interest so over-riding as to make consultation impossible. While there are differences of interests and treatment among the affected creditors in the class, these are issues that will be addressed at the sanction hearing. Approval of the proposed classification in the context of the integrated plans is in accordance with the spirit and purpose of the CCAA.

*Applications granted.*

END OF DOCUMENT

**TAB 4**



I hereby certify this to be a true copy of

the original Order

Dated this 3 day of June, 2010

Benny  
for Clerk of the Court

No.: 0901-13483

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF CALGARY**

**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  
TRIDENT EXPLORATION CORP., FORT ENERGY CORP., FENERGY CORP., 981384  
ALBERTA LTD., 981405 ALBERTA LTD., 981422 ALBERTA LTD., TRIDENT  
RESOURCES CORP., TRIDENT CBM CORP., AURORA ENERGY LLC., NEXGEN  
ENERGY CANADA, INC. AND TRIDENT USA CORP.**

BEFORE THE HONOURABLE  
JUSTICE ROMAINE  
IN CHAMBERS

) AT THE CALGARY COURTS CENTRE  
) IN THE CITY OF CALGARY, IN THE  
) PROVINCE OF ALBERTA, THIS 3<sup>rd</sup>  
) DAY OF JUNE, 2010

**ORDER**

**UPON** the application of the Petitioners in these proceedings (collectively, "**Trident**" or the "**Applicants**"), **AND UPON HAVING READ** the Notice of Motion of Trident, dated May 31, 2010 (the "**Notice of Motion**"), the Affidavit of Todd A. Dillabough, dated May 31, 2010 (the "**Dillabough Affidavit**"), the Affidavit of Ronica Cameron, dated June 1, 2010 (the "**Service Affidavit**"), and the Thirteenth Report of the Monitor, dated May 31, 2010, filed; **AND UPON HAVING READ** the terms and provisions of the plan of compromise or arrangement, dated May 31, 2010, and attached hereto as Schedule "A" (the "**Plan**"); **AND UPON HEARING** counsel for Trident; the Monitor; Farallon Capital Management L.L.C., Special Situations Investing Group, Inc., and Mount Kellett Capital Management LP; Nexen Inc.; and the Steering Committee of the 2006 Lenders and other interested parties; **IT IS HEREBY ORDERED AND DECLARED THAT:**

***Service***

1. Service of notice of the application for this Order, and all supporting materials, is deemed good and sufficient as set out in the Service Affidavit; and the time therefor is abridged to the time actually given.

***Defined Terms***

2. Unless otherwise defined in this Order, all capitalized terms used in this Order shall have the meaning ascribed to such terms in the Plan.

***Filing of the Plan***

3. Trident is hereby authorized and directed to file the Plan, to present the Plan to the Affected Creditors (as defined in the Plan) for their consideration in accordance with the terms of this Order and to seek approval of the Plan in the manner set forth herein.
4. Trident be and is hereby authorized to vary, amend, modify or supplement the Plan by way of a supplementary or amended and restated plan or plans of compromise or arrangement (an "**Amended Plan**") at any time prior to the meeting of Affected Creditors (the "**Creditors' Meeting**"), provided that the Plan is amended in accordance with its terms (other than paragraphs 4.02 (n), 5.01 (e), 7.02, 7.04 and 7.05 (and in the case of paragraphs 7.02 and 7.04, only to the extent such paragraphs relate to the lenders under the Second Lien Credit Agreement, the Agent as defined in the Second Lien Credit Agreement and each of their respective counsel and financial advisors and any related persons provided with the benefit of such paragraphs)), and Trident or the Monitor, as applicable, (i) files the Amended Plan with this Court, (ii) obtains the prior consent from the Monitor and the Required Backstop Parties (as defined in the Plan) or an Order of this Court on no less than 2 business days prior notice to the Required Backstop Parties, (iii) posts the Amended Plan on the Monitor's Website, and (iv) serves the Amended Plan on the Service List.
5. Trident is hereby authorized to vary, amend, modify or supplement the Plan, in accordance with its terms (other than paragraphs 4.02 (n), 5.01 (e), 7.02, 7.04 and 7.05 (and in the case of paragraphs 7.02 and 7.04, only to the extent such paragraphs relate to the lenders under the Second Lien Credit Agreement, the Agent as defined in the Second Lien Credit Agreement and each of their respective counsel and financial advisors and any related persons provided with the benefit of such paragraphs)), at any time during the Creditors' Meeting, with the prior consent of the Monitor and the Required Backstop Parties, provided that oral notice of any such variation, amendment, modification or

supplement is given to all Affected Creditors holding a Proven Claim or a Disputed Claim (each an “**Eligible Voting Creditor**”) present in person or by proxy (and in such case, notice given to the Eligible Voting Creditor’s proxyholder shall be sufficient) at the Creditors’ Meeting prior to the vote being taken at the Creditors’ Meeting, in which case any such variation, amendment, modification or supplement shall be deemed to be part of and incorporated into the Plan, and such Amended Plan shall be promptly posted on the Monitor’s Website and filed with the CCAA Court as soon as practicable following the Creditors’ Meeting.

6. Trident be and is hereby authorized to vary, amend, modify or supplement the Plan, in accordance with its terms (other than paragraphs 4.02 (n), 5.01 (e), 7.02, 7.04 and 7.05 (and in the case of paragraphs 7.02 and 7.04, only to the extent such paragraphs relate to the lenders under the Second Lien Credit Agreement, the Agent as defined in the Second Lien Credit Agreement and each of their respective counsel and financial advisors and any related persons provided with the benefit of such paragraphs)), at any time and from time to time after the Creditors’ Meeting (both prior to and subsequent to the Sanction Order, if granted), without obtaining a further Order of this Court and without notice to any Creditors, if Trident, the Monitor and the Required Backstop Parties, acting reasonably and in good faith, determine that such variation, amendment, modification or supplement is of an administrative nature that is not adverse to the financial or economic interests of any of the Affected Creditors under the Plan and is necessary in order to give effect to the substance of the Plan or the Sanction Order.

***Classification of Creditors***

7. For the purposes of considering and voting on the Plan and receiving distributions thereunder, the Affected Claims of the Affected Creditors shall constitute a single class under the Plan.

***Notice of Creditors’ Meeting and Information Package***

8. The form of notice to Creditors of the Creditors’ Meeting (the “**Notice of Creditors’ Meeting**”) and the form of Proxy and Election to Receive \$5,000 (as defined in the Plan)

in substantially the forms attached to this Meeting Order as Schedules "B" and "C", respectively, are hereby approved.

9. The Monitor shall send a copy of the Notice of Creditors' Meeting as soon as practicable, and in any event not later than two (2) Business Days, following the granting of this Order, to each Affected Creditor by registered mail, facsimile, courier or e-mail at the last known address (including the last known fax number or e-mail address) for such Affected Creditor specified by such Affected Creditor in the Claims Procedure.
10. The Notice of Creditors' Meeting shall include a specification of the web address where each Affected Creditor will be able to access and retrieve copies the following documents (collectively, the "**Information Package**"):
  - (a) this Meeting Order;
  - (b) the Plan;
  - (c) a copy of the Monitor's Thirteenth Report;
  - (d) the Notice of Creditors' Meeting; and
  - (e) a copy of the form of Proxy and Election to Receive up to \$5,000 Cash to be used by the Affected Creditors.
11. The Chair (as defined in paragraph 16 of this Order) be and is hereby authorized to accept and rely upon proxies substantially in the form attached as Schedule "C" hereto. Notwithstanding paragraphs 9 and 10 hereof, the Monitor may from time to time, make such minor changes to the Information Package as the Monitor, in consultation with Trident and the Required Backstop Parties, considers necessary or desirable to conform the content thereof to the terms of the Plan or this Meeting Order, or to describe the Plan.
12. The Monitor shall cause a copy of the Information Package to be posted on the Monitor's Website (<http://cfcanada.fticonsulting.com/trident>) within two (2) Business Days of the granting of this Meeting Order and in the case of any amendments made thereto in

accordance with paragraph 11 hereof, as soon as practicable after such amendments are made.

13. The Monitor shall send by registered mail, facsimile, courier or e-mail as soon as practicable following a request therefor, a copy of the Information Package to each Creditor who, no later than two (2) Business Days prior to the Creditors' Meeting (or any adjournment thereof), makes a written request for it.

***Publication of Newspaper Notice***

14. As soon as practicable and within three (3) Business Days of the granting of this Order, a newspaper notice of the Creditors' Meeting, in substantially the form attached as Schedule "D" to this Order (the "Newspaper Notice"), shall be published once by the Monitor in the Globe and Mail (National Edition) and the Wall Street Journal.

***Notice Sufficient***

15. The publication of the Newspaper Notice, the sending of the Information Package to Affected Creditors and the posting of the Information Package on the Monitor's Website, in the manner set out in paragraphs 9 through 14, as applicable, shall constitute good and sufficient service of this Meeting Order, the Plan and the Notice of Creditors' Meeting on all Persons who are entitled to receive notice thereof in these proceedings, or who wish to be present in person or by proxy at the Creditors' Meeting or in these proceedings, and no other form of notice or service need be made on such Persons and no other document or material need be served on such Persons in respect of the Creditors' Meeting or these proceedings. Service shall be effective, in the case of registered mailing, three (3) Business Days after the date of mailing, in the case of service by courier, on the day after the courier was sent, and in the case of service by fax or e-mail, on the day after the fax or e-mail was transmitted, unless such day is not a Business Day, or the fax or e-mail transmission was made after 5:00 p.m. (Calgary time), in which case, on the next Business Day.

***Creditors' Meeting***

16. A representative of the Monitor shall preside as the chair of the Creditors' Meeting (the "Chair") and shall decide all matters relating to the rules and procedures at, and the conduct of, the Creditors' Meeting in accordance with the terms of the Plan, this Creditors' Meeting Order and further Order of this Court. The Chair may adjourn the Creditors' Meeting at his/her discretion.
17. Trident shall call, hold and conduct the Creditors' Meeting on June 16, 2010 at the Crystal Ballroom at the Fairmont Palliser Hotel, Calgary, at 10:00 a.m. (Calgary time) (the "Meeting Date"), or as adjourned to such places and times as the Chair may determine, for the purposes of the Affected Creditors considering and voting on the Plan and transacting such other business as may be properly brought before the Creditors' Meeting.

***Attendance at Creditors' Meeting***

18. The only Persons entitled to notice of, attend or speak at the Creditors' Meeting are the Affected Creditors (or their respective proxy holders), representatives of Trident, the Monitor, the Required Backstop Parties, the legal counsel or agent of any of the foregoing, the Chair, Scrutineers and the Secretary (as defined below). The lenders pursuant to the Second Lien Credit Agreement (the "Second Lien Lenders"), the agent to the Second Lien Lenders and their legal counsel are entitled to notice of and attend the Creditors' Meeting as observers only. Any other Person may be admitted to the Creditors' Meeting only by invitation of Trident or the Chair.
19. An Eligible Voting Creditor that is not an individual may only attend and vote at the Creditors' Meeting if it has appointed a proxyholder to attend and act on its behalf at the Creditors' Meeting.

***Disputed Claims***

20. If the amount of a Disputed Claim has not been resolved prior to the Meeting Date, the holder thereof shall be entitled to vote the full amount of the Disputed Claim in accordance with the provisions of this Meeting Order, without prejudice to the rights of

Trident, the Monitor or the applicable Creditor with respect to the final determination of the Disputed Claim for distribution purposes, and such vote shall be separately tabulated by the Monitor in accordance with paragraph 32 hereof.

21. Allowing an Eligible Voting Creditor to vote at the Creditors' Meeting in respect of a Disputed Claim shall not be construed as an admission that such Eligible Voting Creditor's Claim is a Proven Claim for distribution purposes.

***Voting at the Creditors' Meeting***

22. Any Creditor holding a Claim that has not been filed or asserted in accordance with the Claims Order, or that has filed a Claim that has been disallowed and for which the appeal period has expired with no appeal, will not be entitled to vote on the Plan at the Creditors' Meeting in respect of its Claim.
23. The only Persons entitled to vote at the Creditors' Meeting in person or by proxy, are the Eligible Voting Creditors.
24. Each Eligible Voting Creditor shall have one vote, which vote shall have the aggregate value of its Disputed Claim(s), and/or Proven Claim(s) (as determined in accordance with the Claims Order or any other order of the Court), as applicable.
25. By no later than June 4, 2010, the agent for the 06 Lender Syndicate (as defined in the Claims Order) shall provide to the Monitor a schedule (the "**06 Lenders Schedule**") setting out, as at May 5, 2010, the name and, to the extent contained in the agent's records, the last known address, facsimile number and e-mail address, and name of the contact person of each individual lender under the 06 Lender Syndicate and the percentage held, as at May 5, 2010, by each such individual lender of the aggregate Claims filed by the agent in respect of the 06 Lender Syndicate pursuant to the Claims Order (the "**06 Lender Syndicate Claim**"). As soon as practicable, and in any event not later than two (2) Business Days following the receipt by the Monitor of the 06 Lenders Schedule, the Monitor shall send to each individual lender set out on the 06 Lenders Schedule, at the address, facsimile number or email address provided by the Agent, a copy of the Notice of Creditors' Meeting in accordance with paragraph 9 of this Order

and an Information Package to any individual lender requesting an Information Package in accordance with paragraph 13 of this Order. Each individual lender under the 06 Lender Syndicate shall be entitled to vote at the Creditors' Meeting in person or by proxy as an Eligible Voting Creditor pursuant to this Order in the amount equal to the percentage of the 06 Lender Syndicate Claim held by each such individual lender according to the 06 Lenders Schedule.

26. By no later than June 4, 2010, the agent for the 07 Lender Syndicate (as defined in the Claims Order) shall provide to the Monitor a schedule (the "**07 Lenders Schedule**") setting out, as at May 5, 2010, the name and, to the extent contained in the agent's records, the last known address, facsimile number and e-mail address, and name of the contact person of each individual under the 07 Lender Syndicate and the percentage held, as at May 5, 2010, by each such individual lender of the aggregate Claims filed by the agent in respect of the 07 Lender Syndicate pursuant to the Claims Order (the "**07 Lender Syndicate Claim**"). As soon as practicable, and in any event not later than two (2) Business Days following the receipt by the Monitor of the 07 Lenders Schedule, the Monitor shall send to each individual lender set out on the 07 Lenders Schedule, at the address, facsimile number or email address provided by the Agent, a copy of the Notice of Creditors' Meeting in accordance with paragraph 9 of this Order and an Information Package to any individual lender requesting an Information Package in accordance with paragraph 13 of this Order. Each individual lender under the 07 Lender Syndicate shall be entitled to vote at the Creditors' Meeting in person or by proxy as an Eligible Voting Creditor pursuant to this Order in the amount equal to the percentage of the 07 Lender Syndicate Claim held by each such individual lender according to the 07 Lenders Schedule.
27. No Person shall be entitled to vote on the Plan in respect of a claim that is an Unaffected Claim.
28. The quorum required at the Creditors' Meeting shall be any three (3) Eligible Voting Creditors present in person or by proxy at the Creditors' Meeting.
29. If:



- (a) the requisite quorum is not present at the Creditors' Meeting;
- (b) the Creditors' Meeting is postponed by a vote of the majority in value of the Claims of the Eligible Voting Creditors present in person or by proxy; or
- (c) the Chair otherwise decides to adjourn the Creditors' Meeting,

then the Creditors' Meeting shall be adjourned to such date, time and place as may be designated by the Chair. The announcement of the adjournment by the Chair, the posting of notice of such adjournment on the Monitor's Website and written notice thereof to the Service List shall constitute sufficient notice of the adjournment and Trident and the Monitor shall have no obligation to give further notice to any Person of the adjourned Creditors' Meeting.

- 30. Every question submitted to the Creditors' Meeting, except to approve the Plan resolution, any amendment to or in respect of the Plan or an adjournment of the Creditors' Meeting, will be decided by a majority of votes given on a show of hands or, if by confidential written ballot at the discretion of the Chair, by a simple majority in number of the Eligible Voting Creditors.
- 31. The Chair shall direct a vote by the Eligible Voting Creditors on the resolution substantially in the form attached hereto as Schedule "E" to approve the Plan (i) by way of written ballot, or (ii) if the Chair deems it appropriate, by a show of hands.
- 32. The Monitor may appoint scrutineers (the "Scrutineers") for the supervision and tabulation of the attendance, quorum, and votes cast at the Creditors' Meeting. A Person or Persons designated by the Monitor shall act as secretary (the "Secretary") at the Creditors' Meeting and shall tabulate all Proven Claims (and, if applicable, Disputed Claims) voted at the Creditors' Meeting.
- 33. For voting purposes, the Monitor shall keep a separate record and tabulation of any votes cast in respect of Proven Claims and Disputed Claims.
- 34. The result of any vote conducted at the Creditors' Meeting shall be binding upon each and every Affected Creditor, whether or not such Affected Creditor was present or voted

at the Creditors' Meeting, without prejudice to such Affected Creditor's ability to oppose the Plan at the Sanction Hearing.

35. Following the vote at the Creditors' Meeting, the Monitor shall tally the votes cast and determine whether the Plan has been approved by the majorities of Eligible Voting Creditors required pursuant to section 6 of the CCAA (the "**Required Majorities**").
36. The Monitor shall file its report to this Court by no later than one (1) Business Day after the Meeting Date with respect to the results of the votes cast, including whether:
  - (a) the Plan has been accepted by the Required Majorities; and
  - (b) the votes cast by Eligible Voting Creditors with Disputed Claims, if any, would affect the result of the vote.
37. If the vote on the approval or rejection of the Plan by Eligible Voting Creditors is decided by the votes in respect of the Disputed Claims, Trident shall seek an order for an expedited determination of any material Disputed Claims and an appropriate deferral of the application for the Sanction Order and any other applicable dates in this Order and the Plan.

#### ***Voting By Proxies***

38. All proxies submitted in respect of the Creditors' Meeting (or any adjournment thereof) shall be in substantially the form attached to this Order as Schedule "C" or in such other form as is acceptable to the Monitor or the Chair.
39. An Eligible Voting Creditor wishing to appoint a proxy to represent such Eligible Voting Creditor at the Creditors' Meeting (or any adjournment thereof) may do so by inserting such Person's name in the blank space provided on the form of proxy and sending the completed form to the Monitor by e-mail to [trident@fticonsulting.com](mailto:trident@fticonsulting.com), or if the completed form cannot be sent by e-mail, it shall be sent by registered mail, facsimile or courier to:

FTI Consulting Canada Inc.  
Monitor of Trident Exploration Corp., et al.

TD Waterhouse Tower, 79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Canada M5K 1G8  
Tel: 416-649-8100  
Fax: 416-649-8101

40. A proxy must be received by the Monitor by noon (Calgary time) on the last Business Day preceding the date set for the Creditors' Meeting or any adjournment thereof, or delivered by hand to the Chair prior to the commencement of the Creditors' Meeting (or commencement of an adjourned Creditors' Meeting in case of adjournment). After commencement of the Creditors' Meeting (or commencement of an adjourned Creditors' Meeting in case of adjournment), no proxies shall be accepted by the Monitor.
41. The following shall govern the submission of proxies and any deficiencies in respect of the form or substance of proxies filed with the Monitor:
  - (a) an Eligible Voting Creditor who has given a proxy may revoke it (unless it has agreed otherwise) as to any matter on which a vote has not already been cast pursuant to its authority, by an instrument in writing executed by such Eligible Voting Creditor or by its attorney, duly authorized in writing or, if an Eligible Voting Creditor is not an individual, by an officer or attorney thereof duly authorized, and deposited with the Monitor as provided in paragraph 39 above;
  - (b) if no name has been inserted in the space provided to designate the proxyholder on the proxy, the Eligible Voting Creditor shall be deemed to have appointed Nigel Meakin of the Monitor (or such other Person as Nigel Meakin, in his sole discretion, may designate) as the Eligible Voting Creditor's proxyholder;
  - (c) if the proxy is not dated in the space provided, it shall be deemed to be dated on the date it is received by the Monitor;
  - (d) a proxy submitted by an Eligible Voting Creditor that bears or is deemed to bear a later date than an earlier proxy submitted by such Eligible Voting Creditor shall be deemed to revoke the earlier proxy;

- (e) if more than one valid proxy for the same Eligible Voting Creditor and bearing or deemed to bear the same date are received by the Monitor with conflicting instructions, such proxies shall not be counted for the purposes of the vote;
- (f) the Person named in the proxy shall vote the Proven Claim or Disputed Claim, as applicable, of the Eligible Voting Creditor in accordance with the direction of the Eligible Voting Creditor appointing such Person on any ballot that may be called for. In the absence of any such direction, such Proven Claim or Disputed Claim, as applicable, shall be voted in favour of the Plan resolution;
- (g) a proxy confers a discretionary authority upon the Person named therein with respect to amendments or variations to the matters identified in the notices of the Creditors' Meeting and in this Plan, and with respect to other matters that may properly come before the Creditors' Meeting; and
- (h) the Monitor in consultation with Trident is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which any proxy is completed and executed, and may waive strict compliance with the requirements in connection with the deadlines imposed in connection therewith.

***Transfers or Assignments of Claims***

- 42. If a Creditor transfers or assigns an Affected Claim to another Person, such transferee or assignee shall not be entitled to attend and vote the transferred or assigned Affected Claim at the Creditors' Meeting unless (i) the assigned Affected Claim is a Proven Claim or Disputed Claim, or a combination thereof, and (ii) satisfactory proof of assignment has been delivered in accordance with paragraphs 35 and 36 of the Claims Order no later than three (3) calendar days prior to the Meeting Date.
- 43. If a Creditor transfers or assigns (i) the whole of an Affected Claim to more than one Person, or (ii) part of such Affected Claim to another Person or Persons, such transfers or assignments shall not create separate Affected Claims for voting purposes. Only the last Creditor holding the whole of the Affected Claim may attend and vote the transferred or assigned Affected Claim at the Creditors' Meeting, unless such Creditor delivers notice

in writing to Trident and the Monitor no later than three (3) calendar days prior to the Meeting Date directing that a specified transferee or assignee may vote the whole of such Affected Claim at the Creditors' Meeting if and to the extent such Affected Claim may otherwise be voted at such Creditors' Meeting.

*Hearing for Sanction of the Plan* "BR"

44. If the Plan is approved by the Required Majorities and Trident is not required to seek an Order pursuant to paragraph ~~36~~<sup>37</sup> hereof, Trident shall seek Court approval of the Plan at a motion for the Sanction Order, which motion shall be returnable before this Court at 10:00 a.m. (Calgary time) on June 18, 2010, or as soon after that date as the matter can be heard (the "Sanction Hearing").

✓ 45. ~~Service of the Monitor's Thirteenth Report in accordance with paragraph 9 hereof, the posting of this Meeting Order and Information Package in accordance with paragraph 11 hereof and the publication of the Newspaper Notice in accordance with paragraph 13 hereof, shall constitute good and sufficient service of the notice of the Sanction Hearing on all Persons who may be entitled to receive notice of the Sanction Hearing, and no other form of notice or service need be made on such Persons, and no other document or materials need be served on such Persons in respect of the Sanction Hearing unless they have filed and served a Demand of Notice or Notice of Appearance.~~ ✓

46. Any Person (other than Trident, the Monitor and other Persons already on the Service List) wishing to receive materials and appear at the Sanction Hearing shall serve upon the lawyers for Trident and the Monitor, and file with this Court, a Demand of Notice or Notice of Appearance by not later than 5:00 p.m. (Calgary time) on June 17, 2010.

47. Any party who wishes to oppose the motion for final sanctioning of the Plan shall serve upon the lawyers for both Trident and the Monitor, and upon all other parties on the Service List, by not later than 5:00 p.m. (Calgary time) on June 17, 2010, a copy of the materials to be used to oppose the motion for approval of the Plan, setting out the basis for such opposition.

48. If the Sanction Hearing is adjourned, only those Persons who are listed on the Service List (which shall include those Persons who have complied with paragraph 45 of this Order) shall be served with notice of the adjourned date.

***General***

49. The Monitor in consultation with Trident and the Required Backstop Parties may, in its discretion, generally or in individual circumstances, waive in writing the time limits imposed on any Creditor under this Meeting Order if the Monitor, in consultation with Trident and the Required Backstop Parties, deems it advisable to do so, without prejudice to the requirement that all other Creditors must comply with this Meeting Order.
50. If any deadline set out in this Meeting Order falls on a day other than a Business Day, the deadline shall be extended to the next Business Day.
51. Notwithstanding the terms of this Order, Trident or the Monitor may apply to this Court from time to time for such further order or orders as it considers necessary or desirable to amend, supplement or replace this Creditors' Meeting Order.
52. The Sale and Solicitation Process (the "SISP") as approved by an Order of this Court dated February 18, 2010 is hereby terminated and Trident and the Monitor shall have no further obligations in respect of the SISP, provided that such termination shall not affect the rights and obligations of Trident or any other party in interest to seek directions from the Court as set out in paragraph 31 of the SISP including the right of the Canadian Credit Bid Party or the Required Lenders from seeking approval for the Canadian Credit Bid pursuant to paragraph 31 in the event that the Backstop Parties terminate the Commitment Letter or fail to close under the Commitment Letter by July 6, 2010 (all capitalized terms in this paragraph shall have the meanings as ascribed to such terms in the SISP).

***Effect, Recognition and Assistance of Other Courts***

53. This Meeting Order and any other Order in this proceeding shall have full force and effect in all provinces and territories in Canada and abroad and as against all Persons against whom they may otherwise be enforceable.

54. This Court hereby requests the aid and recognition (including assistance pursuant to section 17 of the CCAA, as applicable) of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Meeting Order.

" B.E.C. Romaine "  
J.C.Q.B.A

ENTERED this 3 day of June, 2010

*K. McAvland* 

CLERK OF THE COURT

**SCHEDULE "A" TO MEETING ORDER  
(CCAA PLAN)**



## TABLE OF CONTENTS

### ARTICLE 1 INTERPRETATION

1.01	Definitions.....	1
1.02	Construction .....	7
1.03	Determination of Claims .....	8
1.04	Successors and Assigns.....	8
1.05	Governing Law.....	8

### ARTICLE 2 PURPOSE AND IMPACT OF THE PLAN

2.01	Purpose.....	8
2.02	Persons Affected.....	8
2.03	Claims Not Affected.....	8
2.04	Payments of Maximum Gross Distributable Amount and Net Distributable Amount.....	9

### ARTICLE 3 TREATMENT OF AFFECTED CLAIMS

3.01	Single Class of Affected Creditors.....	9
3.02	Treatment of Affected Claims.....	9
3.03	Voting by Affected Creditors.....	10
3.04	Entitlement of Affected Creditors .....	10
3.05	Canadian Group Guarantee Liabilities Released on Implementation and no Distribution therefor.....	11
3.06	Disputed Claims .....	11
3.07	Extinguishment of Claims .....	11
3.08	Set-Off.....	11
3.09	Crown Priority Claims .....	12

### ARTICLE 4 SANCTION ORDER

4.01	Application for Sanction Order.....	12
4.02	Sanction Order.....	12

### ARTICLE 5 CONDITIONS OF PLAN IMPLEMENTATION

5.01	Conditions of Plan Implementation .....	14
5.02	Waiver of Plan Implementation Conditions.....	16
5.03	Monitor's Certificate .....	16
5.04	Failure to Satisfy Plan Conditions.....	16

### ARTICLE 6 IMPLEMENTATION

**6.01 Implementation of Plan ..... 16**  
**6.02 Procedure for Payments and Distributions ..... 17**  
**6.03 Distributions for Proven Claims on the Initial Distribution Date..... 17**  
**6.04 Calculation of Distribution when Disputed Claims Outstanding..... 17**  
**6.05 Distributions for Proven Claims on the Final Distribution Date ..... 18**  
**6.06 Distributions by the Monitor ..... 18**  
**6.07 Uncashed Distributions ..... 18**

**ARTICLE 7  
EFFECT OF THE PLAN**

**7.01 Binding Effect of Plan..... 18**  
**7.02 Releases of the Monitor, Applicants and Others with respect to the Plan and  
the CCAA Proceedings..... 18**  
**7.03 Releases of Officers, Directors, Deemed Directors and Employees of  
Applicants ..... 19**  
**7.04 Releases by the Applicants ..... 19**  
**7.05 Compliance with Order dated May 7, 2010..... 20**

**ARTICLE 8  
GENERAL**

**8.01 Waiver of Breaches and Defaults ..... 20**  
**8.02 Amendments to Plan..... 21**  
**8.03 Working in Conjunction with the U.S. Chapter 11 Plan and Further  
Assurances ..... 21**  
**8.04 Guarantees and Similar Covenants..... 21**  
**8.05 Consents and Waivers ..... 22**  
**8.06 Different Capacities ..... 22**  
**8.07 Paramountcy ..... 22**  
**8.08 Termination ..... 22**  
**8.09 Responsibilities of Monitor ..... 23**

**TRIDENT EXPLORATION CORP.,  
FORT ENERGY CORP.,  
FENERGY CORP.,  
981384 ALBERTA LTD.  
981405 ALBERTA LTD.  
and  
981422 ALBERTA LTD.**

**PLAN OF ARRANGEMENT AND COMPROMISE**

**PURSUANT TO THE COMPANIES' CREDITORS  
ARRANGEMENT ACT**

**May 31, 2010**

## PLAN OF COMPROMISE

### ARTICLE 1 INTERPRETATION

#### 1.01 Definitions.

In this Plan unless otherwise stated or unless the context otherwise requires:

“**Affected Claims**” means all Claims except Unaffected Claims.

“**Affected Creditors**” means Creditors with Affected Claims in respect of and to the extent of such Affected Claims.

“**Applicants**” means the Canadian Applicants and the U.S. Debtors.

“**Backstop Commitment Agreement**” means the agreement dated February 22, 2010 (and approved by the Court on February 18, 2010) among Trident Resources Corp., Trident and the Backstop Parties, as amended from time to time.

“**Backstop Parties**” has the meaning given to that term in the U.S. Chapter 11 Plan.

“**Business Day**” means a day other than a Saturday, Sunday or statutory holiday in Alberta.

“**Canadian Applicants**” means Trident Exploration Corp., Fort Energy Corp., Fenergy Corp, 981384 Alberta Ltd., 981405 Alberta Ltd. and 981422 Alberta Ltd.

“**Alberta Energy**” means Her Majesty the Queen in right of Alberta as represented by the Minister of Energy of the Province of Alberta.

“**Canadian Group Guarantee Creditor**” means a Creditor with a Claim in respect of Canadian Group Guarantee Liabilities.

“**Canadian Group Guarantees**” means all guarantees and other agreements provided or delivered by the Canadian Applicants (or by any one or more of them) alone or together with others, whereby a Canadian Applicant or Canadian Applicants guaranteed payment of indebtedness and liability owing by Trident Resources Corp. or any of its subsidiaries pursuant to or in respect of:

- (a) the credit agreement dated November 24, 2006, as amended from time to time, among Trident Resources Corp., as borrower, certain of its subsidiaries as guarantors, Credit Suisse, Toronto Branch, as agent and the lenders party thereto; or
- (b) the credit agreement dated August 20, 2007, as amended from time to time, among Trident Resources Corp., as borrower, certain of its subsidiaries as guarantors, Wells Fargo, N.A., as agent and the lenders party thereto;

**“Canadian Group Guarantee Liabilities”** means all indebtedness and liability, whether direct or indirect, absolute or contingent, now or hereafter owing by the Canadian Applicants (or any one or more of them) pursuant to or in respect of the Canadian Group Guarantees (or any of them).

**“CCAA”** means the *Companies’ Creditors Arrangement Act* (Canada), R.S.C. 1985, c.C-36, as amended.

**“CCAA Amended and Restated Initial Order”** means the Order of the Court dated October 6, 2009, as amended or varied by further Order, ordering and declaring, *inter alia*, that the Applicants are companies to which the CCAA applies.

**“CCAA Proceedings”** means the proceedings under the CCAA commenced by the Applicants.

**“CCAA Professionals Reserve”** has the meaning given to that term in section 6.01(a) of this Plan.

**“Chapter 11 Cases”** mean the cases commenced under chapter 11 of the U.S. Bankruptcy Code on the Filing Date by the U.S. Debtors in the U.S. Bankruptcy Court and being jointly administered with one another under Case No. 09-13150 (MFW).

**“Claim”** means any right or claim of any Person against the Canadian Applicants (or any one or more of them) in connection with any indebtedness, liability or obligation of any kind of a Canadian Applicant in existence on the Filing Date, including all Canadian Group Guarantee Liabilities owing as at the Filing Date, or which has arisen after the Filing Date as a result of the termination or repudiation (including the deemed termination pursuant to this Plan) by a Canadian Applicant on or before the Plan Implementation Date of any lease, executory contract, agreement or other arrangement in existence on the Filing Date) and any interest accrued thereon prior to the Filing Date, (but excluding all Post-Filing Interest and Costs), whether liquidated, unliquidated, fixed, contingent, absolute, matured, unmatured, disputed, undisputed, asserted, unasserted, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, whether or not reduced to judgment, and whether or not such right is executory in nature including the right or ability of any Person to advance a claim for contribution, indemnity, subrogation or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future based in whole or in part on facts, events or matters which exist or occurred on or before the Filing Date.

**“Claims Officer”** means the Claims Officer (as defined by the Claims Order).

**“Claims Order”** means an Order of the Court dated March 30, 2010 directing the establishing and approving of the claims procedure, as amended or varied by further Order.

**“Court”** means the Court of Queen’s Bench of Alberta hearing Action Number 0901-13483, the Applicants’ CCAA Proceedings.

**“CRA”** means the Canada Revenue Agency.

**“Creditor”** means any Person having a claim against a Canadian Applicant and includes the transferee of a Claim acknowledged by the Monitor in accordance with the claims procedure established by the Claims Order, or a trustee, liquidator, receiver, receiver and manager or other Person acting on behalf of such Person.

**“Creditor Approval”** means the approval of the Plan by the Affected Creditors in accordance with the provisions hereof and the CCAA.

**“Disputed Claim”** means an Affected Claim (including a contingent Affected Claim which may become a Proven Claim upon the occurrence of an event or events occurring after the Filing Date) or such portion thereof which is not a Proven Claim, which is disputed and which is subject to adjudication before the Claims Officer or the Court or otherwise pursuant to the Claims Order.

**“Disputed Claims Reserve”** has the meaning set out in section 6.04 of this Plan.

**“Effective Time”** means the time on the Plan Implementation Date that the Monitor files with the Court the certificate by the Monitor referred to in section 5.03.

**“Election Deadline”** means:

- (a) noon on June 15, 2010 for each Election to Receive \$5,000 delivered to the Monitor by any method other than hand delivery to the Monitor; or
- (b) the commencement of the Meeting for each Election to Receive \$5,000 hand delivered to the Monitor on the day of the Meeting.

**“Election to Receive \$5,000”** means a written election by an Affected Creditor which holds Affected Claims in an aggregate amount in excess of \$5,000 to reduce the aggregate amount of such Person’s Affected Claims to \$5,000 made in the form attached as Schedule “C” to the Meeting Order.

**“Equipment Lease Claims”** means claims by a lessor of equipment against a Canadian Applicant arising from the lease of equipment to such Canadian Applicant as lessee unless such lease is repudiated by such Canadian Applicant.

**“Exit Facility”** has the meaning given to that term in the U.S. Chapter 11 Plan.

**“Exit Facility Agreement”** has the meaning given to that term in the U.S. Chapter 11 Plan.

**“Filing Date”** means September 8, 2009.

**“Final Distribution Date”** means a Business Day to be chosen by Trident, in consultation with the Monitor, on which the second and final distribution shall be made in respect of Proven Claims, which date shall be a date after all Disputed Claims have been finally determined in accordance with the Claims Order.

**“Final Order”** means an Order, ruling or judgment of the Court, or any other court of competent jurisdiction, which is not subject to any stay.

**“Financial Advisors”** means financial advisors retained by the Applicants (or any of them) in accordance with an Order of the Court and includes Rothschild Inc.

**“Initial Distribution Date”** means a Business Day to be chosen by Trident, in consultation with the Monitor, on which the first distribution shall, as soon as practicable after the Plan Implementation Date, be made in respect of Proven Claims.

**“Maximum Gross Distributable Amount”** means \$20.4 million (USD).

**“Meeting”** means the meeting of Affected Creditors held to consider the Plan.

**“Meeting Order”** means the Order of the Court dated June 3, 2010 authorizing the filing of this Plan and setting out the procedures for the Meeting and dissemination of the documents relating thereto.

**“Monitor”** means FTI Consulting Canada ULC, in its capacity as the monitor appointed by the CCAA Amended and Restated Initial Order.

**“Net Distributable Amount”** means the Maximum Gross Distributable Amount less all amounts payable or paid to satisfy Secured Trade Claims.

**“Order”** means an order of a court of competent jurisdiction being, unless otherwise specified, the Court.

**“Person”** means an individual, partnership, joint venture, trust, corporation, group, firm, association, unincorporated organization, committee, government, or agency or instrumentality thereof, or any other juridical entity howsoever designated or constituted.

**“Plan”** means this plan of arrangement and compromise effected under the CCAA, as may be amended, varied or supplemented from time to time in accordance with the provisions hereof.

**“Plan Implementation Date”** means the Business Day on which the conditions to the Plan as set out in the Plan have been satisfied or waived and the Monitor files with the Court the certificate by the Monitor referred to in section 5.03.

**“Post-Filing Interest and Costs”** means all interest accrued or accruing on or after the Filing Date on or in respect of an Affected Claim and all costs and expenses incurred on or after Filing Date pursuant to or in respect of an Affected Claim.

**“Prepetition Agents”** has the meaning given to that term in the U.S. Chapter 11 Plan.

**“Proven Claim”** means the amount of the Affected Claim of a Creditor against a Canadian Applicant finally determined in accordance with the provisions of the Claims Order and which has become a Proven Claim pursuant to and as defined in the Claims Order.

**“Required Backstop Parties”** has the meaning given to that term in the U.S. Chapter 11 Plan.

**“Rights Offering”** has the meaning given to that term in the U.S. Chapter 11 Plan.

**“Rights Offering Procedures”** has the meaning given to that term in the U.S. Chapter 11 Plan.

**“Sanction Order”** means an Order of the Court made under the CCAA in form and on terms acceptable to the Required Backstop Parties and Trident, approving and sanctioning the Plan and providing any other relief as described in section 4.02 of the Plan.

**“Second Lien Credit Agreement”** means the Amended and Restated Credit Agreement dated as of April 25, 2006 as amended from time to time among Trident as borrower, certain of its subsidiaries as guarantors, Credit Suisse, Toronto Branch, as agent, (as succeeded by Wilmington Trust FSB, as agent) and the lenders party thereto.

**“Secured Claims”** means all claims, or part thereof, of a Creditor which are secured by security validly liening, charging or encumbering any asset of a Canadian Applicant (including statutory and possessory liens and equipment leases which create security interests) up to the realizable value of the collateral so liened, charged or encumbered (but excluding Equipment Lease Claims) and which have been registered or recorded with the applicable personal property security registry, land registry or land titles office.

**“Secured Creditors”** means Creditors holding Secured Claims with respect to, and to the extent of such Secured Claims.

**“Secured Non-Trade Claims”** means Secured Claims that do not arise from the supply by a Secured Creditor of goods or services to a Canadian Applicant.

**“Secured Trade Claims”** means Secured Claims that arise from the supply by a Secured Creditor of goods or services to a Canadian Applicant including any such supply which legally entitles the supplier to the benefit of a statutory lien or trust under the *Builders’ Lien Act* (Alberta) or a similar statute in any other jurisdiction.

**“Tax Act”** means the *Income Tax Act* (Canada).

**“TD Credit Agreement”** means the agreement dated July 8, 2004 between The Toronto-Dominion Bank, as lender and Trident, as borrower, in respect of a revolving secured credit facility in the maximum principal amount of Cdn. \$10 million, as amended.

**“Trident”** means Trident Exploration Corp.

**“Unaffected Claims”** means:

- (a) claims under the Second Lien Credit Agreement (including for certainty any claims arising thereunder after the Filing Date);
- (b) claims arising after the Filing Date, but excluding Claims arising after the Filing Date as a result of the termination or repudiation (including any deemed



termination pursuant to this Plan) by a Canadian Applicant on or before the Plan Implementation Date of any lease, executory contract, agreement or other arrangement in existence on the Filing Date;

- (c) claims of employees of a Canadian Applicant employed on or after the Filing Date and arising on or prior to the Filing Date in their capacities as employees for all amounts owing to them by statute with respect to accrued salary, wages, expense reimbursement obligations, vacation pay, medical and dental benefits, pension payments pursuant to a registered pension plan or retirement compensation arrangement to the extent that funds or other assets are held in trust for the purpose of making such pension payments, but excluding any unpaid bonuses payable to employees that, at the Filing Date, do not constitute wages pursuant to the *Employment Standards Code* (Alberta), but including, despite any of the foregoing, Claims of employees of a Canadian Applicant, who were employed by such Canadian Applicant on the Filing Date and who continued to be employed on implementation of the Plan, in respect of health and dental benefits provided by a Canadian Applicant to such employees as at the Filing Date provided such employees were, as at the Filing Date, receiving long term disability benefits;
- (d) all Secured Claims, whether Secured Trade Claims or Secured Non-Trade Claims, including Claims arising before the Filing Date of any subcontractor, any material supplier or any other Person to the extent, and only to the extent, that such subcontractor, material supplier or other Person is legally entitled to the benefit of a statutory lien or trust under the *Builders' Lien Act* (Alberta) or other similar statute in any other jurisdiction;
- (e) all amounts owing by a Canadian Applicant to a customer of such Canadian Applicant (that is not an affiliate of such Canadian Applicant or did not, as at the Filing Date, deal with such Canadian Applicant at other than arms length) which such Canadian Applicant would be legally entitled to set off against any amount owing by such customer to such Canadian Applicant whether such amount arises before, on or after the Filing Date, but excluding any Claims for or in respect of product or service warranties or liability;
- (f) all claims with respect to reasonable fees and disbursements of counsel of any Canadian Applicant, the Monitor, the Monitor's counsel, the Claims Officer, any Financial Advisor, a Financial Advisor's counsel, or any professional advisor retained by any of the foregoing, as approved by the Court to the extent required;
- (g) claims against a Canadian Applicant imposed by statute and referred to in section 3.09 of the Plan;
- (h) intercompany Claims between and among any of the Applicants;
- (i) claims by Backstop Parties pursuant to the Backstop Commitment Agreement;
- (j) Equipment Lease Claims;

- (k) claims by a lessor of real property leased to a Canadian Applicant pursuant to the lease of such real property;
- (l) claims of Alberta Energy; and
- (m) claims of a person pursuant to the employee retention plan approved by the Order made November 20, 2009.

**“U.S. Bankruptcy Court”** means the United States Bankruptcy Court for the District of Delaware or such other court as may have jurisdiction over the Chapter 11 Cases.

**“U.S. Chapter 11 Plan”** means the joint plan of reorganization of Trident Resources Corp. and certain of its affiliated debtors and debtors in possession filed in the Chapter 11 Cases and attached hereto as Exhibit 1 including all exhibits attached thereto or referred to therein as the same may be amended, varied or supplemented from time to time in accordance with the provisions thereof.

**“U.S. Confirmation Order”** has the meaning given to the term “Confirmation Order” in the U.S. Chapter 11 Plan.

**“U.S. Debtors”** means, collectively, Trident Resources Corp., Trident CBM Corp., Aurora Energy LLC, Nexgen Energy Canada, Inc. and Trident USA Corp.

## **1.02 Construction**

In this Plan, unless otherwise expressly stated or the context otherwise requires:

- (a) the division of the Plan into Articles and sections and the use of headings are for convenience of reference only and do not affect the construction or interpretation of the Plan;
- (b) the words “hereunder”, “hereof” and similar expressions refer to the Plan and not to any particular Article or section and references to “Articles” or “sections” are to Articles and sections of the Plan;
- (c) words importing the singular include the plural and *vice versa* and words importing any gender include all genders;
- (d) the word “including” means “including without limiting the generality of the foregoing”;
- (e) a reference to any statute is to that statute as now enacted or as the statute may from time to time be amended, re-enacted or replaced and includes any regulation made thereunder;
- (f) references to dollar amounts are to Canadian dollars unless otherwise specified; and

(g) references to times are to local time in Calgary, Alberta.

**1.03 Determination of Claims**

For purposes of proofs of claim, voting and distribution, all Claims shall be determined as at the Filing Date in accordance with the Claims Order.

**1.04 Successors and Assigns**

The Plan shall be binding on and shall inure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of each Person named in or subject to the Plan.

**1.05 Governing Law**

The Plan shall be governed by and construed in accordance with the laws of Alberta and the federal laws of Canada applicable therein. Any disputes as to the interpretation or application of the Plan and all proceedings taken in connection with the Plan shall be subject to the exclusive jurisdiction of the Court.

**ARTICLE 2  
PURPOSE AND IMPACT OF THE PLAN**

**2.01 Purpose**

The purpose of the Plan is to effect a compromise of Affected Claims against the Canadian Applicants in order to enable their businesses to continue in the expectation that all Persons with an economic interest in a Canadian Applicant will derive a greater benefit from its continued operation as a going concern than would result from the immediate sale or forced liquidation of its assets. The Plan will also facilitate the payment by the Applicants of, among other Unaffected Claims, claims under the Second Lien Credit Agreement in full with the funding of this Plan to be provided pursuant to the Exit Facility and through the proceeds of a Rights Offering being conducted by the U.S. Debtors pursuant to the Rights Offering Procedures and the U.S. Chapter 11 Plan. Any claims by Creditors against the Applicants that are U.S. Debtors will be dealt with exclusively pursuant to the U.S. Chapter 11 Plan.

**2.02 Persons Affected**

On the Plan Implementation Date, the Plan will be binding on each Canadian Applicant and on all Persons with Affected Claims against any Canadian Applicant to the extent of their Affected Claims.

**2.03 Claims Not Affected**

The Unaffected Claims of Creditors will not be affected by the compromises set out in the Plan.

**2.04 Payments of Maximum Gross Distributable Amount and Net Distributable Amount**

Any amounts required to satisfy or discharge any Secured Trade Claims shall be paid from the Maximum Gross Distributable Amount and all Affected Claims shall, subject to the provisions of the Plan, share the Net Distributable Amount. Any amounts required to satisfy or discharge any disputed Secured Trade Claims shall be held by the Monitor in a separate interest bearing trust account until such dispute is resolved and no such amount shall form part of the Net Distributable Amount unless it is finally determined that such amount is not payable with respect to such disputed Secured Trade Claims.

**ARTICLE 3  
TREATMENT OF AFFECTED CLAIMS****3.01 Single Class of Affected Creditors**

All Affected Creditors shall constitute a single class under the Plan for all purposes.

**3.02 Treatment of Affected Claims**

All Affected Claims shall, subject to section 3.04 and the other provisions of the Plan, be treated as follows:

- (a) a Person who, on the Plan Implementation Date, holds Affected Claims in an aggregate amount of \$5,000 or less or a Person who, on the Plan Implementation Date, holds Affected Claims in an aggregate amount in excess of \$5,000 and who, by providing an Election to Receive \$5,000 to the Monitor before the Election Deadline, reduced the aggregate amount of such Person's Affected Claims to \$5,000, will receive in accordance with the Plan after the Plan Implementation Date, in full and final satisfaction of all such Person's Affected Claims, an amount equivalent to the lesser of:
  - (i) \$5,000; and
  - (ii) the aggregate amount of such Person's Proven Claims; anda Person who provided an Election to Receive \$5,000 to the Monitor and receives a distribution in accordance with this section shall not be entitled to any other payment or consideration with respect to such Person's Affected Claims; despite any other provision of the Plan, the total amount payable under section 3.01(a) shall not exceed the Net Distributable Amount; and
- (b) a Person who, on the Plan Implementation Date, holds Affected Claims in an aggregate amount in excess of \$5,000 but who did not provide the Monitor with an Election to Receive \$5,000 before the Election Deadline pursuant to section 3.02(a), will receive in accordance with the Plan after the Plan Implementation Date, in full and final satisfaction of such Person's Affected Claims, an amount equivalent to the lesser of:

- (i) the aggregate amount of such Person's Proven Claims multiplied by a fraction:
  - A. the numerator of which is the Net Distributable Amount less the total amount paid or payable pursuant to section 3.01(a); and
  - B. the denominator of which is the total amount of all Affected Claims (other than those Affected Claims being paid by a distribution pursuant to section 3.01(a); or
- (ii) the aggregate amount of such Person's Proven Claims.

### **3.03 Voting by Affected Creditors**

Each holder of a Proven Claim or a Disputed Claim shall be entitled to vote on this Plan at the Meeting of Affected Creditors, to the extent of the amount of its Proven Claim or Disputed Claim. The Monitor shall keep a separate record and tabulation of any votes cast in respect of Disputed Claims. The Monitor shall report the result of the vote and the tabulation of votes of Proven Claims and Disputed Claims to the Court and, if the decision by Affected Creditors whether to approve or reject the Plan is affected by the votes cast in respect of the Disputed Claims, Trident shall seek direction from the Court in respect thereof. The fact that a Disputed Claim is allowed for voting purposes shall not preclude Trident or the Monitor from disputing the Disputed Claim for distribution purposes.

### **3.04 Entitlement of Affected Creditors**

- (a) All cash payments made to an Affected Creditor pursuant to the Plan shall be applied firstly in satisfaction of the outstanding principal amount of the Proven Claims held by such Affected Creditor and the balance, if any, shall then be applied to accrued and unpaid interest which forms part of such Proven Claims.
- (b) No Affected Creditor shall receive any Post-Filing Interest and Costs and any claim for or in respect of Post-Filing Interest and Costs shall be released by the Sanction Order as provided by section 4.02(e) of this Plan.
- (c) Each Affected Creditor which is a non-resident of Canada shall pay non-resident withholding tax, if any, imposed under Part XIII of the Tax Act as a condition of receiving any distribution under the Plan. Trident or the Monitor on behalf of Trident may deduct from any cash payment under the Plan to the holder of a Proven Claim any amount claimed by or appearing to be properly remitted to CRA and such amount shall be remitted to CRA with notice to such holder.
- (d) Each Affected Creditor shall be liable to pay any tax exigible in respect of amounts received by such Affected Creditor pursuant to the Plan and the Applicants shall have no liability with respect thereto.

### **3.05 Canadian Group Guarantee Liabilities Released on Implementation and no Distribution therefor**

Despite section 3.02 or any other provision of the Plan, the Canadian Group Guarantee Creditors shall not receive any distribution under the Plan in respect of Canadian Group Guarantee Liabilities and all Canadian Group Guarantee Liabilities and all claims (including Claims) with respect thereto shall be released at the Effective Time as provided by sections 4.02(g) and 5.01(g) of the Plan.

### **3.06 Disputed Claims**

Affected Creditors with Disputed Claims on the Plan Implementation Date shall not be entitled to receive any distribution hereunder with respect to such Disputed Claims. A Disputed Claim shall be referred for resolution in the manner set out in the Claims Order. Distributions pursuant to section 6.04 of this Plan shall be paid in respect of any Disputed Claim that is finally resolved or settled and becomes a Proven Claim in accordance with the Claims Order.

### **3.07 Extinguishment of Claims**

As of and from the Effective Time and in accordance with the provisions of the Sanction Order, the treatment of claims under the Plan (including Proven Claims and Disputed Claims) shall be final and binding on the Canadian Applicants and all Creditors affected thereby (and their respective heirs, executors, administrators, legal personal representatives, successors and assigns) and all Claims (including all Claims with respect to Canadian Group Guarantees and Canadian Group Guarantee Liabilities), other than Unaffected Claims, shall be released and discharged as against the Canadian Applicants and the Canadian Applicants shall thereupon be released from all Claims (including all Claims with respect to Canadian Group Guarantees and Canadian Group Guarantee Liabilities), other than Unaffected Claims and other than the obligations of the Canadian Applicants to make payments in the manner and to the extent provided for in the Plan; provided that such discharge and release shall be without prejudice to the right of a holder of a Disputed Claim to prove such Disputed Claim in accordance with the provisions of the Claims Order so that such Disputed Claim becomes a Proven Claim entitled to receive consideration under section 3.02 of the Plan.

### **3.08 Set-Off**

Despite any other provision of the Plan, the law of set-off applies to all claims made by or against a Canadian Applicant (including Claims) to the same extent as if such Canadian Applicant were plaintiff or defendant, as the case may be. However, a Person may only set off as against a Claim an obligation of such Person to the Canadian Applicant (that is otherwise the proper subject of set-off) and that existed on or before the Filing Date and a Person may only set off as against a claim by such Person against a Canadian Applicant arising after the Filing Date, an obligation of such Person to such Canadian Applicant arising after the Filing Date (that is otherwise the proper subject of set-off).

### **3.09 Crown Priority Claims**

Within six months after the date of the Sanction Order, each Canadian Applicant shall pay in full to Her Majesty in Right of Canada or of a province all amounts owing by it of a kind that could be subject to a demand under subsection 224(1.2) of the Tax Act or under any substantially similar provision of any provincial legislation and that were outstanding at the Filing Date and are of a kind that could be subject to a demand under:

- (a) subsection 224(1.2) of the ITA;
- (b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the ITA and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the ITA, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
  - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the ITA; or
  - (ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

## **ARTICLE 4 SANCTION ORDER**

### **4.01 Application for Sanction Order**

If Creditor Approval of the Plan is obtained, the Canadian Applicants shall apply to the Court for the Sanction Order. If Creditor Approval is not obtained, the Canadian Applicants shall so report to the Court as soon as reasonably practicable.

### **4.02 Sanction Order**

The Applicants shall apply for a Sanction Order having effect on the Plan Implementation Date (or as may be otherwise provided in the Sanction Order) which shall, among other things:

- (a) declare that the compromises contemplated by the Plan are approved, binding and effective as herein set out on all Persons affected by the Plan;

- (b) declare that the stay of proceedings contained in the CCAA Amended and Restated Initial Order continues until the Plan Implementation Date;
- (c) subject to section 6.01(a) of the Plan, discharge as at the Effective Time, all charges of assets of the Applicants granted by any Order in favour of the Monitor, the Monitor's counsel, the Canadian Applicants' counsel and others;
- (d) discharge as at the Effective Time all charges of assets of the Applicants granted by any Order of the Court in favour of the employees, directors, deemed directors and officers of the Applicants;
- (e) release as at the Effective Time all Post-Filing Interest and Costs;
- (f) declare that the U.S. Confirmation Order issued by the U.S. Bankruptcy Court confirming the U.S. Chapter 11 Plan is binding in Canada on all Applicants that are U.S. Debtors and on all creditors of all Applicants (and of any one or more of them);
- (g) release as at the Effective Time all Canadian Group Guarantee Liabilities and all claims (including Claims) with respect thereto;
- (h) declare that the appointment of the Claims Officer shall cease as at the Effective Time except with respect to matters to be completed pursuant to the Plan after the Effective Time (including the resolution of any Disputed Claims pursuant to the Claims Order);
- (i) declare that, as at and from the Effective Time and except to the extent, if any, expressly contemplated by the Plan or the Sanction Order, all obligations or agreements to which any of the Canadian Applicants is a party (including all equipment leases and real property leases) shall be and remain in full force and effect, unamended as at the Plan Implementation Date, unless terminated or repudiated by a Canadian Applicant pursuant to the CCAA Amended and Restated Initial Order, and no Person who is a party to any such obligation or agreement shall, on or after the Plan Implementation Date, accelerate, terminate, rescind, refuse to renew, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise, or purport to enforce or exercise, any right (including any right of set-off, combination of accounts, dilution, buy-out, divestiture, forced purchase or sale option or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason of:
  - (i) any event or events which occurred on or before the Plan Implementation Date and is not continuing after the Plan Implementation Date or which is or continues to be suspended or waived under the Plan, which would have entitled any party thereto to enforce such rights or remedies (including defaults or events of default arising as a result of the insolvency of any Applicant);
  - (ii) any Applicant having sought or obtained relief under the CCAA; or



- (iii) any compromises, arrangements, reorganizations or transactions effected pursuant to the Plan;
- (j) declare that a director or employee of a Canadian Applicant or any other person shall not have any right or claim under any existing long-term incentive plan of such Canadian Applicant arising out of, or relating to any provision of such plan with respect to a change of control of a Canadian Applicant, a termination provision or any other provision of such plan which would entitle such person to be paid a greater amount or on a different time frame than the amount to which such person was entitled on the Filing Date under such plan, paid in cash in instalments over a three-year period as set out in a schedule agreed upon between the Backstop Parties and the Applicants pursuant to the Backstop Committee in the maximum aggregate amount of \$7,329,727.30 for all persons who are members of or entitled to payments under such long-term incentive plans, and that all such existing long-term incentive plans are terminated as of the Plan Implementation Date, subject only the right to receive such instalment payments;
- (k) declare that the releases contained in this Plan are effective and binding;
- (l) declare that the arrangements and compromises contained in this Plan are fair and are not oppressive;
- (m) direct the applicable land registrars to discharge all construction liens and mechanics' liens registered against title to real property of any Canadian Applicant upon such Canadian Applicant's request; and
- (n) declare that implementation of the Plan is conditional on the payment in full and in cash on or prior to July 6, 2010 of all amounts owing by Trident pursuant to or in respect of the Second Lien Credit Agreement (including by payment into escrow with the Monitor of any such amounts disputed as owing).

## **ARTICLE 5 CONDITIONS OF PLAN IMPLEMENTATION**

### **5.01 Conditions of Plan Implementation**

The implementation of the Plan is conditional on the satisfaction or waiver on or before the Plan Implementation Date of the following conditions, in a manner satisfactory to Trident and the Required Backstop Parties (subject to section 5.02 of the Plan):

- (a) Creditor Approval of the Plan shall have been obtained;
- (b) the Court shall have issued the Sanction Order in accordance with section 4.02 and the Sanction Order shall be a Final Order;
- (c) the Exit Facility Agreement shall have been executed and delivered and funds are available thereunder to pay payments to be made pursuant to the Plan;

- (d) payment in full and in cash of all amounts owing by Trident pursuant to or in respect of the TD Credit Agreement (including by payment into escrow with the Monitor of any such amounts disputed as owing) and the discharge on or before implementation of all security with respect thereto;
- (e) payment in full and in cash of all amounts owing by Trident pursuant to or in respect of the Second Lien Credit Agreement (including by payment into escrow with the Monitor of any such amounts disputed as owing) and after such payment the discharge on implementation of all security with respect thereto;
- (f) the conditions to the effectiveness set out in section 12.2 of the U.S. Chapter 11 Plan, except for the conditions set out in sections 12.2 (h) and (i), have been satisfied or waived in accordance with section 12.4 of the U.S. Chapter 11 Plan, and the U.S. Chapter 11 Plan will have become effective in accordance with its terms;
- (g) the release pursuant to the U.S. Chapter 11 Plan of all amounts guaranteed by Canadian Group Guarantees and all Canadian Group Guarantee Liabilities shall have occurred upon the U.S. Chapter 11 Plan becoming effective;
- (h) all construction lien claims and mechanics' lien claims registered against title to real property of any Canadian Applicant are discharged from title on or before implementation of the Plan (either by being bonded off or by any other discharge mechanism satisfactory to Trident) or the Sanction Order contains an order directing the applicable land titles registrars to discharge such liens upon such Canadian Applicant's request;
- (i) all agreements and other documents and other instruments which are necessary to be executed and delivered by any Canadian Applicant to implement the Plan and perform its obligations hereunder, shall have been executed and delivered;
- (j) any applicable governmental, regulatory and judicial consents or orders, and other similar consents and approvals, and all filings with all governmental authorities, securities commissions and other regulatory authorities having jurisdiction, in each case to the effect deemed necessary or desirable for the completion of the transactions contemplated by the Plan or any aspect thereof, shall have been made, obtained or received;
- (k) all documents necessary to give effect to all material provisions of the Plan shall have been executed and delivered by all relevant Persons;
- (l) all steps, conditions and documents necessary to the implementation of the Plan (including without limitation those set out above) are capable of being implemented on or before the Plan Implementation Date;
- (m) arrangements satisfactory to the Required Backstop Parties shall have been made before the Meeting for the termination or amendment of existing long-term incentive plans with the senior management and directors of the Canadian

Applicants and such senior management and directors shall, before the Meeting, have granted releases and waivers, satisfactory in form and substance to the Required Backstop Parties, of all Claims thereunder, including any Claims arising out of or relating to any change of control, termination or any other provision of any agreement, that would entitle them to any payment or consideration other than payments in the maximum aggregate amount of \$7,329,727.30 as set out in a schedule agreed upon between the Backstop Parties and the Applicants pursuant to the Backstop Commitment Agreement; and

- (n) the Effective Time occurs not later than 4:00 p.m. (Calgary time) on July 2, 2010.

#### **5.02 Waiver of Plan Implementation Conditions**

Any condition set forth in section 5.01 (other than sections 5.01 (a), (b), (e) and (n)) may be waived in whole or in part by the Canadian Applicants, with the consent of the Required Backstop Parties without any notice to any other parties in interest or the Court and without a hearing. The condition set forth in section 5.01 (n) may be waived by the Canadian Applicants with the consent of all Backstop Parties. Any condition so waived shall be deemed to have been satisfied for the purposes of the Plan.

#### **5.03 Monitor's Certificate**

Upon being advised in writing by an officer of Trident that the conditions set out in section 5.01 have been satisfied or waived in accordance with section 5.02 and that the Plan is capable of being implemented, the Monitor shall file with the Court a certificate stating that all conditions precedent set out in section 5.01 of the Plan have been satisfied or waived in accordance with the Plan and that the Plan is capable of being implemented forthwith.

#### **5.04 Failure to Satisfy Plan Conditions**

If the conditions contained in section 5.01 of the Plan are not satisfied or waived in accordance with section 5.02 of the Plan on or before the day which is 30 days after the date on which the Sanction Order is issued or such later date as may be specified by Trident (with the consent of the Required Backstop Parties the Plan shall not be implemented and the Plan and the Sanction Order shall cease to have any further force or effect.

### **ARTICLE 6 IMPLEMENTATION**

#### **6.01 Implementation of Plan**

After and subject to the satisfaction or waiver (in accordance with section 5.02 of the Plan) of the conditions set out in section 5.01 of the Plan, the following shall occur in accordance with the Plan:

- (a) on or before the Plan Implementation Date, Trident shall pay all reasonable fees and disbursements of the Canadian Applicants' counsel, the Monitor, the Monitor's counsel, the Financial Advisors, counsel to the Financial Advisors and

any professional advisors retained by any of the foregoing. In addition a reserve for the estimated amount of future costs of the Monitor and the Monitor's counsel shall be fully funded by Trident ("**CCAA Professionals Reserve**") prior to the Plan Implementation Date. The amount of the CCAA Professionals Reserve shall be agreed to by the Monitor, the Required Backstop Parties and Trident (or failing such agreement, the amount thereof shall be determined by the Court). The CCAA Professionals Reserve shall be held by and administered by the Monitor. Notwithstanding any other provision of this Plan, on the Plan Implementation Date, the Administration Charge (as defined by the CCAA Amended and Restated Initial Order) shall attach to and charge the CCAA Professionals Reserve; any amounts remaining in the CCAA Professionals Reserves on account of interest or otherwise shall, after such future costs have been paid, be remitted to Trident;

- (b) on or before the Plan Implementation Date, Trident shall pay all amounts as contemplated in the Backstop Commitment Agreement approved by an Order of the Court made February 18, 2010; and
- (c) as soon as practicable following the Plan Implementation Date, Trident shall fund the payments required by the Plan in accordance with the Plan.

#### **6.02 Procedure for Payments and Distributions**

- (a) On the Plan Implementation Date, Trident shall provide the Net Distributable Amount to the Monitor by wire transfer.
- (b) The Monitor shall hold the Net Distributable Amount in a separate interest bearing trust account pending distribution in accordance with the provisions of the Plan.

#### **6.03 Distributions for Proven Claims on the Initial Distribution Date**

On the Initial Distribution Date, all Affected Creditors with Proven Claims will receive distributions in accordance with section 3.02 hereof.

#### **6.04 Calculation of Distribution when Disputed Claims Outstanding**

In the event that there are Disputed Claims on the Initial Distribution Date then, for the sole purpose of the calculation of the amount to be distributed in accordance with section 3.02, Disputed Claims shall be treated as though they were Proven Claims. For greater certainty, no distribution will be made on account of Disputed Claims unless and until such Disputed Claims become Proven Claims, but the aggregate amount of the distribution so calculated that is attributable to such Disputed Claims shall be held in reserve by the Monitor in a separate interest bearing trust account (the "**Disputed Claims Reserve**").

**6.05 Distributions for Proven Claims on the Final Distribution Date**

On the Final Distribution Date, the Disputed Claims Reserve shall be distributed to Affected Creditors with Proven Claims, such that the total distributions made to each Affected Creditor with a Proven Claim shall be the applicable amount specified by section 3.02.

**6.06 Distributions by the Monitor**

All cash distributions to be made under this Plan shall be made by the Monitor by cheque and will be sent, via regular mail, to an Affected Creditor to the last known address for such Affected Creditor provided pursuant to the Claims Order.

**6.07 Uncashed Distributions**

If any distribution cheque issued pursuant to this Plan remains uncashed on the date that is seven months after the Final Distribution Date, the amount of such distribution shall be returned by the Monitor to Trident for Trident's use and the Affected Creditor shall have no further claim to such distribution.

**ARTICLE 7  
EFFECT OF THE PLAN**

**7.01 Binding Effect of Plan**

On the Plan Implementation Date, the Plan shall be implemented by the Applicants and shall be fully effective and binding on the Applicants and all Persons affected by the Plan. Without limitation, the treatment of Claims under the Plan and under the Claims Order shall be final and binding on the Canadian Applicants, the Creditors and all Persons affected by the Plan and their respective heirs, executors, administrators, legal representatives, successors and assigns.

**7.02 Releases of the Monitor, Applicants and Others with respect to the Plan and the CCAA Proceedings**

Effective on the Plan Implementation Date, counsel to the Applicants, the Monitor, counsel to the Monitor, the Applicants, the direct and indirect shareholders of the Applicants, the Financial Advisors, counsel to the Financial Advisors, the Backstop Parties, counsel to the Backstop Parties, the financial advisors to the Backstop Parties, the lenders under the Second Lien Credit Agreement, the Agent as defined in the Second Lien Credit Agreement and each of their respective counsel and financial advisors, such financial advisors' counsel, any professional advisors retained by any of the foregoing and each of their respective present and former affiliates, officers, directors, shareholders, advisory affiliates, members, employees, agents, attorneys, counsel, investment bankers, successors and assigns shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, liens and other recoveries on account of any claim, liability, obligation, demand or cause of action of any nature which any of the Applicants, any Creditor or any other Person, as applicable, may have or be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen,

existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of issue of the Sanction Order in any way relating to, arising out of or in respect of the Plan, the CCAA Proceedings, the Rights Offering or the U.S. Chapter 11 Plan other than Unaffected Claims.

### **7.03 Releases of Officers, Directors, Deemed Directors and Employees of Applicants**

Effective on the Plan Implementation Date, each and every current and former director, officer, deemed director and employee of each Applicant shall, to the extent permitted by the CCAA, be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, liens and other recoveries on account of any claim, liability, obligation, demand or cause of action of any nature which such Applicant, any Creditor or any other Person may have or be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or before the date of issue of the Sanction Order or in any way relating to, arising out of or in respect of the Plan, the CCAA Proceedings, the Rights Offering or the U.S. Chapter 11 Plan or in any way relating to, arising out of, or in respect of any claim or claims against such directors, officers, deemed directors or employees that relate to any obligations of such Applicant including for or in respect of:

- (a) statutory liabilities which may be imposed on them, or any of them, by reason of an Applicant's failure to pay any amounts which are required to be deducted from employees' wages including, without limitation, amounts in respect of employment insurance, Canada pension plan, Quebec pension plan and income taxes;
- (b) employee claims for wages, vacation pay, severance pay, termination pay and benefits;
- (c) employee claims or the claims of third parties in respect of pension plans or pensions; or
- (d) claims for any amounts in the form of damages or fines relating to environmental matters.

### **7.04 Releases by the Applicants**

As at the Plan Implementation Date, the Applicants will be deemed to forever release, waive and discharge all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, liens and other recoveries on account of any claim, liability, obligation, demand or cause of action of any nature which any of the Applicants may have or be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of issue of the Sanction Order in any way relating to, arising out of or in respect of the Plan, the CCAA Proceedings, the Rights Offering or the U.S. Chapter 11 Plan, against: (a) the Prepetition Agents, each in such capacity; (b) the Backstop Parties, each in such

capacity; and (c) the lenders under the Second Lien Credit Agreement, the Agent as defined in the Second Lien Credit Agreement and each of their respective counsel and financial advisors, each in such capacity, the present and former affiliates, officers, directors, shareholders, advisory affiliates, members, employees, agents, attorneys, counsel, advisors, accountants, financial advisors, investment bankers, successors and assigns (including any professionals retained by such persons and entities) of the entities identified in (a), (b) and (c); *provided, however*, that the foregoing releases shall not apply to any Person who, in connection with any act or omission by such Person in connection with or relating to the Applicants or their businesses, has been or is hereafter found by any court or tribunal by Final Order to have acted with gross negligence or willful misconduct.

#### **7.05 Compliance with Order dated May 7, 2010**

Pursuant to order granted by this Court on May 7, 2010 (the “**May 7 Order**”), the inclusion of the lenders under the Second Lien Credit Agreement, the Agent (as defined under the Second Lien Credit Agreement) and of their respective counsel and financial advisors in the releases set out in section 7.02 hereof shall be conditional upon the Required Lenders not objecting to the approval of this Plan and the confirmation of the U.S. Chapter 11 Plan and the Sanction Order and the confirmation order in respect of the U.S. Chapter 11 Plan, (other than as set out in paragraph 14 of the May 7 Order).

### **ARTICLE 8 GENERAL**

#### **8.01 Waiver of Breaches and Defaults**

From and after the Plan Implementation Date, all Persons shall be deemed to have permanently waived any and all breaches and defaults of any Applicant then existing or previously committed by such Applicant, caused by such Applicant, or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in any contract, lease or other agreement, written or oral, (including all joint venture agreements and other similar agreements) or any or all amendments or supplements thereto, between such Person and such Applicant, and any and all notices of breach or default and demands for payment under any instrument or agreement, including any guarantee by an Applicant, shall be deemed to have been rescinded. In the event that the implementation of this Plan or the U.S. Chapter 11 Plan or any transaction or step contemplated by this Plan or the Chapter 11 Plan would result in the breach of or a default under any term or covenant of any contract, lease or other agreement of any Canadian Applicant or would otherwise give rise to or any Person to any Claim thereunder including in respect of any severance payment, change of control payment or similar payment or right, all parties to such contracts, leases and other agreements shall be deemed to have consented to such breaches and defaults and waived and released any Claims in respect thereof including in respect of any severance payment, change of control payment or similar payment or right, in consideration for the ongoing benefit to be derived by such parties from such contracts, leases or other agreements and on the understanding that such transactions and steps are necessary for the implementation of the Plan for the benefit of the Applicants’ Creditors and other stakeholders. In the event that any party to any such contract, lease or other agreement objects to the consent and waiver set out in this section, it shall

notify the Monitor and the Canadian Applicants in writing of such objection prior to the date of the Meeting, in which case such contract, lease or other agreement shall be deemed to have been disclaimed and resiliated prior to the Plan Implementation Date and any Claim which such party may have shall be an Affected Claim under this Plan.

#### **8.02 Amendments to Plan**

The Canadian Applicants shall be entitled, at any time and from time to time, with the consent of the Required Backstop Parties or as otherwise ordered by the Court, to amend, restate, modify or supplement the Plan (other than an amendment to section 4.02(n) or section 5.01(e)), provided that any such amendment, restatement, modification or supplement is contained in a written document which is filed with the Court and:

- (a) if made prior to the Meeting, is communicated to the Affected Creditors in the manner required by the Court (if so required) or at the Meeting; or
- (b) if made following the Meeting, is made with the approval of the Court and of the Affected Creditors which may be adversely affected by the amendment,

*provided, however,* that any such alteration, amendment, modification or supplement may be made unilaterally by the Canadian Applicants before or after the Sanction Order is issued if it concerns only a matter which, in the opinion of the Canadian Applicants, Monitor and Required Backstop Parties is of an administrative nature required to give better effect to implementation of this Plan and is not adverse to the financial or economic interests of the Affected Creditors.

#### **8.03 Working in Conjunction with the U.S. Chapter 11 Plan and Further Assurances**

This Plan is intended to work in conjunction with the U.S. Chapter 11 Plan in order to implement the transactions contemplated by the Backstop Commitment Agreement and, unless this Plan is terminated in accordance with its terms, the Applicants shall work with the Required Backstop Parties in good faith to implement such transactions. Notwithstanding that some of the transactions and events set out in the Plan may be deemed to occur without any additional act or formality other than as set out herein, each of the Persons affected by the Plan shall, and shall be deemed to make, do and execute, or cause to be made, done or executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may be reasonably required by the Canadian Applicants in order to better implement the Plan.

#### **8.04 Guarantees and Similar Covenants**

No Person who has a claim as a guarantor, surety, indemnitor or similar covenant or in respect of any Claim which is compromised under the Plan or who has any right to claim over in respect of or to be subrogated to the rights of any Person in respect of a Claim which is compromised under the Plan shall be entitled to any greater rights than the applicable Creditor whose Claim was compromised under the Plan.



### **8.05 Consents and Waivers**

Upon the implementation of the Plan on the Plan Implementation Date, each Creditor shall be deemed to have consented and agreed to all of the provisions of the Plan as an entirety. In particular, each Creditor shall be deemed:

- (a) to have executed and delivered to the Applicants all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety; and
- (b) to have waived any non-compliance by each Applicant with any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Creditor and such that occurred on or before the Plan Implementation Date.

### **8.06 Different Capacities**

Persons who are affected by the Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not affect such Person in any other capacity, unless expressly agreed by the Person in writing or unless its Claims overlap or are otherwise duplicative.

### **8.07 Paramountcy**

From and after the Plan Implementation Date, if there is any conflict between any provision of the Plan and any provision of any other contract, document, agreement or arrangement, written or oral, between any Creditor and any Applicant in existence on the Plan Implementation Date, such provision of the Plan shall govern.

### **8.08 Termination**

At any time prior to the Plan Implementation Date, the Canadian Applicants, with the consent of the Required Backstop Parties, or by Order of the Court, may determine not to proceed with this Plan notwithstanding the obtaining of the Sanction Order, provided that if such termination has not been consented to by the Required Backstop Parties in writing, such termination shall be without prejudice to the rights of the Required Backstop Parties to seek such Orders as may be necessary or advisable to compel the Canadian Applicants to implement this Plan. If the conditions precedent to implementation of this Plan are not satisfied or waived, if the Canadian Applicants determine not to proceed with this Plan, with the consent of the Required Backstop Parties or by Order of the Court, or if the Sanction Order is not issued by the Court: (a) this Plan shall be null and void in all respects, (b) any settlement or compromise embodied in this Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void, and (c) nothing contained in this Plan, and no act taken in preparation of the consummation of this Plan, shall: (i) constitute or be deemed to constitute a waiver or release of any Claims or any defences thereto by or against any of the Affected Creditors or any other Person, (ii) prejudice in any manner the rights of any of the Affected Creditors or any other

Person in any further proceedings involving the Applicants, or (iii) constitute an admission of any sort by the Applicants, the Affected Creditors or any other Person.

**8.09 Responsibilities of Monitor**

The Monitor is acting in its capacity as Monitor in the CCAA Proceedings and the Monitor will not be responsible or liable for any obligations of the Canadian Applicants hereunder. The Monitor will have only those powers granted to it by this Plan, by the CCAA and by any Order of the Court in the CCAA Proceedings, including the CCAA Amended and Restated Initial Order.

DATED as of the 31<sup>st</sup> day of May, 2010.

**TRIDENT EXPLORATION CORP.**

**FORT ENERGY CORP.**

**FENERGY CORP.**

**981384 ALBERTA LTD**

**981405 ALBERTA LTD**

**981422 ALBERTA LTD**

**Exhibit 1**

**Copy of U.S. Chapter 11 Plan**

**Exhibit 1**

**Copy of U.S. Chapter 11 Plan**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----X  
In re: : Chapter 11  
: :  
TRIDENT RESOURCES CORP., et al., : Case No. 09-13150 (MFW)  
: :  
: (Jointly Administered)  
Debtors. : :  
: :  
: :  
: :  
: :  
-----X

**SECOND AMENDED JOINT PLAN OF REORGANIZATION OF  
TRIDENT RESOURCES CORP. AND CERTAIN AFFILIATED  
DEBTORS AND DEBTORS IN POSSESSION**

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*Attorneys for the Debtors and Debtors in Possession*

Dated: May 5, 2010

## TABLE OF CONTENTS

	<u>Page</u>
EXHIBITS.....	iv
<b>ARTICLE I DEFINITIONS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME.....</b>	<b>3</b>
<b>A.    Scope of Definitions.....</b>	<b>3</b>
<b>B.    Definitions.....</b>	<b>3</b>
<b>C.    Rules of Interpretation.....</b>	<b>16</b>
<b>D.    Computation of Time.....</b>	<b>16</b>
<b>E.    References to Monetary Figures.....</b>	<b>16</b>
<b>F.    Plan Supplement.....</b>	<b>16</b>
<b>ARTICLE II ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS .....</b>	<b>17</b>
<b>2.1    Administrative Claims.....</b>	<b>17</b>
<b>2.2    Priority Tax Claims.....</b>	<b>17</b>
<b>ARTICLE III CLASSIFICATION OF CLAIMS AND INTERESTS .....</b>	<b>18</b>
<b>3.1    General Rules of Classification.....</b>	<b>18</b>
<b>3.2    Classification of Claims and Interests.....</b>	<b>18</b>
<b>ARTICLE IV TREATMENT OF CLAIMS AND INTERESTS .....</b>	<b>19</b>
<b>4.1    Class 1 (Other Priority Claims).....</b>	<b>19</b>
<b>4.2    Class 2 (Other Secured Claims).....</b>	<b>19</b>
<b>4.3    Class 3 (General Unsecured Claims).....</b>	<b>20</b>
<b>4.4    Class 4 (2006 Credit Agreement Claims).....</b>	<b>20</b>
<b>4.5    Class 5 (2007 Loan Agreement Claims).....</b>	<b>20</b>
<b>4.6    Class 6 (Interests in TRC).....</b>	<b>20</b>
<b>4.7    Class 7 (Affiliated Debtor Interests).....</b>	<b>21</b>
<b>4.8    Class 8 (Intercompany Claims).....</b>	<b>21</b>
<b>ARTICLE V ACCEPTANCE OR REJECTION OF THE PLAN .....</b>	<b>21</b>
<b>5.1    Impaired Classes of Claims Entitled to Vote.....</b>	<b>21</b>
<b>5.2    Classes Deemed to Accept the Plan.....</b>	<b>21</b>
<b>5.3    Acceptance by Impaired Classes.....</b>	<b>21</b>
<b>5.4    Classes Deemed to Reject the Plan.....</b>	<b>22</b>
<b>5.5    Confirmation without Acceptance by All Impaired Classes.....</b>	<b>22</b>
<b>ARTICLE VI MEANS FOR IMPLEMENTATION OF THE PLAN.....</b>	<b>22</b>
<b>6.1    Continued Corporate Existence.....</b>	<b>22</b>
<b>6.2    Limited Consolidation for Voting, Confirmation and Distribution Purposes.....</b>	<b>22</b>
<b>6.3    Restructuring Transactions.....</b>	<b>23</b>
<b>6.4    Corporate Governance.....</b>	<b>24</b>
<b>6.5    Directors and Officers.....</b>	<b>25</b>
<b>6.6    Long-Term Incentive Plan.....</b>	<b>25</b>
<b>6.7    The Rights Offering.....</b>	<b>25</b>
<b>6.8    Issuance of New Equity.....</b>	<b>26</b>

6.9	Issuance and Distribution of New Equity. ....	26
6.10	Use of Proceeds from Rights Offering; Treatment of Second Lien Credit Agreement Obligations. ....	26
6.11	Registration Rights Agreement. ....	26
6.12	Exemptions for Issuance of New Equity. ....	26
6.13	Cancellation of Securities and Agreements. ....	27
6.14	Preservation of Causes of Action. ....	27
6.15	Management Equity Incentive Plan. ....	27
6.16	Exclusivity Period. ....	28
6.17	Corporate Action. ....	28
6.18	Effectuating Documents; Further Transactions. ....	28
6.19	Exemption from Certain Transfer Taxes and Recording Fees. ....	28

**ARTICLE VII TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.....29**

7.1	General Treatment. ....	29
7.2	Cure of Defaults. ....	29
7.3	Rejection Claims. ....	30
7.4	Mineral Leases. ....	30
7.5	Survival of Indemnification Provisions. ....	30
7.6	Survival of Other Employment Arrangements. ....	30
7.7	Insurance Policies. ....	31
7.8	Nonoccurrence of Effective Date. ....	31

**ARTICLE VIII PROVISIONS GOVERNING DISTRIBUTIONS.....32**

8.1	Record Date for Distributions. ....	32
8.2	Timing and Calculation of Amounts to Be Distributed. ....	32
8.3	Disbursing Agent. ....	32
8.4	Rights and Powers of Disbursing Agent. ....	32
8.5	Distributions on Account of Claims Allowed After the Effective Date. ....	33
8.6	Delivery of Distributions and Undeliverable or Unclaimed Distributions. ....	33
8.7	Withholding and Reporting Requirements. ....	34
8.8	Setoffs. ....	34
8.9	Claims Paid or Payable by Third Parties. ....	35
8.10	No Interest on Disputed Claims. ....	35
8.11	Postpetition Interest on Claims. ....	35
8.12	Allocation of Plan Distributions Between Principal and Interest. ....	36

**ARTICLE IX PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS.....36**

9.1	Objections to Claims. ....	36
9.2	No Distributions Pending Allowance. ....	36
9.3	Estimation of Claims. ....	36
9.4	Distributions Relating to Disputed Claims. ....	37
9.5	Disallowed Claims. ....	37

**ARTICLE X ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS.....37**

10.1	Professional Claims. ....	37
------	---------------------------	----

10.2	Post-Confirmation Date Retention.....	38
10.3	Bar Date for Other Administrative Claims.....	38
<b>ARTICLE XI EFFECT OF PLAN CONFIRMATION.....</b>		<b>38</b>
11.1	Revesting of Assets.....	38
11.2	Discharge of the Debtors.....	39
11.3	Compromises and Settlements.....	39
11.4	Release by the Debtors of Certain Parties.....	39
11.5	Release by the Holders of Claims and Interests.....	40
11.6	Exculpation.....	40
11.7	Injunction.....	41
<b>ARTICLE XII CONFIRMATION OF THE PLAN.....</b>		<b>41</b>
12.1	Conditions to Confirmation.....	41
12.2	Conditions to the Effective Date.....	42
12.3	Effect of Failure of Conditions to Effective Date.....	42
12.4	Waiver of Conditions to Confirmation or Consummation.....	43
12.5	Effective Date.....	43
<b>ARTICLE XIII RETENTION OF JURISDICTION.....</b>		<b>43</b>
<b>ARTICLE XIV MISCELLANEOUS PROVISIONS.....</b>		<b>45</b>
14.1	Binding Effect.....	45
14.2	Payment of Statutory Fees.....	45
14.3	Payment of Fees and Expenses of Prepetition Agents, Backstop Parties and Backstop Party Professionals.....	45
14.4	Post-Confirmation Reporting.....	45
14.5	Modification and Amendments.....	45
14.6	Substantial Consummation.....	46
14.7	Request for Expedited Determination of Taxes.....	46
14.8	Withholding and Reporting Requirements.....	46
14.9	Revocation, Withdrawal, or Non-Consummation.....	46
14.10	Notices.....	46
14.11	Term of Injunctions or Stays.....	48
14.12	Severability.....	48
14.13	Governing Law.....	48
14.14	Entire Agreement.....	48
14.15	Waiver or Estoppel.....	48
14.16	Conflicts.....	49



**EXHIBITS**

<b>Exhibit A</b>	<b>Canadian Plan</b>
<b>Exhibit B-1</b>	<b>Original Commitment Letter</b>
<b>Exhibit B-2</b>	<b>Amendment to the Original Commitment Letter</b>
<b>Exhibit C</b>	<b>Rights Offering Procedures</b>

## INTRODUCTION

Trident Resources Corp. and its affiliated debtors and debtors in possession in the above-captioned jointly administered Chapter 11 Cases hereby propose this joint plan of reorganization for the resolution of the outstanding Claims against and Interests in the Debtors. Capitalized terms used herein shall have the meanings ascribed to them in ARTICLE IB of the Plan.

Each of the Debtors is pursuing a parallel reorganization in Canada through the Canadian Proceedings along with the Canadian Petitioners. The Debtors are also petitioners in the Canadian Proceedings in order to secure the benefit of the stay under the CCAA. Effectiveness of the Plan will be conditioned upon the effectiveness of the Canadian Plan in the Canadian Proceedings, and effectiveness of the Canadian Plan will be conditioned upon the effectiveness of the Plan.

The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to an order of the Bankruptcy Court. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code. The distributions to be made to holders of Claims and Interests under the Plan are set forth herein.

The Plan contemplates that voting on and confirmation of the Plan, and distributions to holders of Claims against and Interests in the Debtors in the Chapter 11 Cases under the Plan, shall be effected as if the Estates of the Debtors were consolidated for such purposes.<sup>1</sup> The Plan contemplates that solely for such voting, confirmation and distribution purposes, (i) each and every Claim against any Debtor in the Chapter 11 Cases will be treated as if it were a single Claim against all the Debtors and (ii) to the extent that a creditor has a Claim in respect of the same underlying obligation against one or more Debtors in the Chapter 11 Cases, such creditor will receive a single recovery in respect of such Claim, which Claim shall be satisfied as set forth herein. The Debtors' ability to confirm the Plan with respect to rejecting Classes of claims pursuant to the cramdown standards of section 1129(b) of the Bankruptcy Code will be determined by reference to the treatment to which the holders of Claims in such Class would be entitled were (i) their Claims limited to the specific Debtor(s) that are liable for such Claims, and (ii) the Debtors not treated as if they were consolidated for distribution and confirmation purposes. For the avoidance of doubt, the Debtors are not seeking, and neither the Plan nor the Confirmation Order shall effectuate, substantive consolidation of the Debtors' Estates.

Under section 1125(b) of the Bankruptcy Code, a vote to accept or reject the Plan cannot be solicited from a holder of a Claim or Interest until the Disclosure Statement has been approved by the Bankruptcy Court and distributed to holders of Claims and Interests. The Disclosure Statement relating to the Plan was approved by the Bankruptcy Court on May [5], 2010, and has been distributed simultaneously with the Plan to all parties whose votes are being solicited. The Disclosure Statement contains, among other things, a discussion of the Debtors' history, businesses, properties and operations, consolidated projections for those operations, risk factors associated with the Debtors' consolidated businesses and Plan, a summary and analysis of the Plan, and certain related matters including, among other things, the securities to be issued in connection with the implementation of the Plan and the Canadian Plan. **ALL HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.**

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<sup>1</sup>All parties reserve the right to assert any and all claims against any of the Debtors in the Chapter 11 Cases and the Canadian Proceedings and receive distributions on account of any and all such claims in the event that this Plan is not confirmed.

Subject to the restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in ARTICLE XIV of the Plan, each of the Debtors expressly reserves its respective rights to alter, amend, modify, revoke, or withdraw the Plan with respect to such Debtor, one or more times, prior to the Plan's substantial consummation.

A complete list of the Debtors is set forth below. The list identifies each Debtor by its case number in the Chapter 11 Cases.

**THE DEBTORS**

<b>Case</b>	<b>Number</b>
Trident Resources Corp.	09-13150 (MFW)
Trident USA Corp.	09-13152 (MFW)
Aurora Energy LLC	09-13154 (MFW)
NexGen Energy Canada, Inc.	09-13151 (MFW)
Trident CBM Corp.	09-13153 (MFW)

## ARTICLE I

### DEFINITIONS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME

#### A. Scope of Definitions.

For purposes of the Plan, except as expressly provided otherwise or unless the context requires otherwise, all capitalized terms not otherwise defined herein shall have the meanings ascribed to them in Article I.B of the Plan. Any term used in the Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

#### B. Definitions.

1. "2006 Agent" means Credit Suisse, Toronto Branch, as administrative agent and collateral agent under the 2006 Credit Agreement.
2. "2006 Backstop Commitment" means the portion of the Equity Put Commitment to which the 2006 Backstop Parties, severally and not jointly, have committed, pursuant to the Commitment Letter.
3. "2006 Backstop Parties" means those parties holding 2006 Credit Agreement Claims who are signatories to the Commitment Letter.
4. "2006 Credit Agreement" means that certain Secured Credit Facility dated as of November 24, 2006, as amended from time to time, among TRC, certain of its subsidiaries, Credit Suisse, Toronto Branch, as administrative agent and collateral agent, and the lenders party thereto.
5. "2006 Credit Agreement Claims" means those Claims against the Debtors arising under or in connection with the 2006 Credit Agreement.
6. "2006 New Equity" means 40% of the New Equity, prior to giving effect to dilution resulting from the Equity Put Fee (to the extent such fee is not waived by any of the Backstop Parties), the Management Equity Issuance and the Contingent Value Rights.
7. "2007 Agent" means Wells Fargo, N.A., as administrative agent under the 2007 Loan Agreement.
8. "2007 Backstop Commitment" means the portion of the Equity Put Commitment to which the 2007 Backstop Parties, severally and not jointly, have committed, pursuant to the Commitment Letter.
9. "2007 Backstop Parties" means the parties who are signatories to the Commitment Letter and do not hold 2006 Credit Agreement Claims.
10. "2007 Loan Agreement" means that certain Subordinated Loan Agreement dated as of August 20, 2007, as amended from time to time, among TRC, certain of its subsidiaries, Wells Fargo, N.A., as administrative agent, and the lenders party thereto.

11. **"2007 Loan Agreement Claims"** means those Claims against the Debtors arising under or in connection with the 2007 Loan Agreement.

12. **"Accredited Investor"** means an accredited investor as defined in Rule 501 of Regulation D of the U.S. Securities Act of 1933, as amended.

13. **"Administrative Claim"** means a Claim against a Debtor or its Estate arising on or after the Petition Date and prior to the Effective Date for a cost or expense of administration in the Chapter 11 Cases of a kind that is entitled to priority or superpriority under sections 364(c)(1), 503(b), 503(c), 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date of preserving the Estates and operating the businesses of the Debtors (such as wages, salaries, commissions for services and payments for inventories, leased equipment and premises); (b) compensation for legal, financial advisory, accounting and other services and reimbursement of expenses awarded or allowed under sections 330(a) or 331 of the Bankruptcy Code, including Professional Claims; (c) the Equity Put Fee, Backstop Indemnification Obligations and Expense Reimbursement; and (d) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of the Judicial Code.

14. **"Administrative Claims Bar Date"** means the deadline for filing an Administrative Claim (other than an Administrative Claim for the Equity Put Fee, Backstop Indemnification Obligations, or Expense Reimbursement or any other claim under the Commitment Letter), which Claims must be filed so as to actually be received on or before 5 p.m. prevailing Eastern time on the date that is 30 calendar days after the Effective Date, unless otherwise ordered by the Bankruptcy Court.

15. **"Affiliated Debtors"** means all of the Debtors other than Trident Resources Corp.

16. **"Affiliate"** has the meaning given such term by section 101(2) of the Bankruptcy Code.

17. **"Allowed Claim"** means a Claim, or any portion thereof,

(a) that has been allowed by a Final Order of the Bankruptcy Court (or such other court or forum as the Reorganized Debtors and the holder of such Claim agree may adjudicate such Claim and objections thereto);

(b) as to which a proof of claim has been timely filed with the Bankruptcy Court pursuant to the Bankruptcy Code, or is allowed by any Final Order of the Bankruptcy Court or by other applicable non-bankruptcy law, but only to the extent that such claim is identified in such proof of claim in a liquidated and noncontingent amount, and either (i) no objection to its allowance has been filed within the periods of limitation fixed by the Plan, the Bankruptcy Code, or by any order of the Bankruptcy Court, or (ii) any objection as to its allowance has been settled or withdrawn or has been denied by a Final Order;

(c) as to which no proof of claim has been filed with the Bankruptcy Court and (i) which is Scheduled as liquidated in an amount other than zero and not contingent or disputed, but solely to the extent of such liquidated amount and (ii) no objection to its allowance has been filed by the Debtors or the Reorganized Debtors, as applicable, or any other party in interest, within the periods of limitation fixed by the Plan, the Bankruptcy Code, or by any order of the Bankruptcy Court; or

(d) that is expressly allowed in a liquidated amount in the Plan.

18. **“Allowed Class . . . Claim” or “Allowed Class . . . Interest”** means an Allowed Claim or an Allowed Interest in the specified Class.

19. **“Allowed Interest”** means an Interest in any Debtor, which has been or hereafter is listed by such Debtor in its books and records as liquidated in an amount and not disputed or contingent; provided, however, that to the extent an Interest is a Disputed Interest, the determination of whether such Interest shall be allowed and/or the amount of any such Interest shall be determined, resolved, or adjudicated, as the case may be, in the manner in which such Interest would have been determined, resolved, or adjudicated if the Chapter 11 Cases had not been commenced; provided further, that proofs of Interest need not and should not be filed in the Bankruptcy Court with respect to any Interests; and provided further, that the Reorganized Debtors, in their discretion, may bring an objection or motion with respect to a Disputed Interest before the Bankruptcy Court for resolution.

20. **“Amendment to Original Commitment Letter”** means that certain letter amendment to the Original Commitment Letter, dated May 5, 2010, among the Debtors and the Backstop Parties, a copy of which is attached hereto as Exhibit B-2.

21. **“Approval Order”** means that order entered by the Bankruptcy Court on February 23, 2010, authorizing and approving (I) the Debtors’ Entry into the Commitment Letter, (II) the Equity Put Fee, Expense Reimbursement, and Indemnification Obligations, (III) the Procedures for the Sale and Investor Solicitation Process, and (IV) the Form and Manner of Notice Thereof.

22. **“Auction”** means the auction, pursuant to the SISP, held for the sale of Trident’s assets that will take place on June 7, 2010 at 9:30 a.m. (prevailing Eastern Time) at the offices of Akin Gump Strauss Hauer & Feld LLP located at One Bryant Park, New York, New York 10036, or such other location.

23. **“Avoidance Claims”** means Causes of Action or defenses arising under any of sections 502, 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551, or 553 of the Bankruptcy Code, or under similar or related state or federal statutes and common law, including fraudulent transfer laws, whether or not litigation has been commenced as of the Confirmation Date to prosecute such Causes of Action.

24. **“Backstop Indemnification Obligations”** means the Indemnification Obligations, as defined in the Commitment Letter.

25. **“Backstop Parties”** means the 2006 Backstop Parties and the 2007 Backstop Parties.

26. **“Backstop Party Professionals”** has the meaning ascribed to such term in the Commitment Letter.

27. **“Ballot”** means the ballot distributed with the Disclosure Statement or Information Circular, as applicable, for voting on the Plan.

28. **“Bankruptcy Code”** means title 11 of the United States Code, 11 U.S.C. §§101 *et seq.*

29. **"Bankruptcy Court"** means the United States Bankruptcy Court for the District of Delaware or such other court as may have jurisdiction over the Chapter 11 Cases.

30. **"Bankruptcy Rules"** means the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended, the Federal Rules of Civil Procedure, as amended, as applicable to the Chapter 11 Cases or proceedings therein, and the Local Rules of the Bankruptcy Court, as applicable to the Chapter 11 Cases or proceedings therein, as the case may be.

31. **"Bar Date"** means the deadlines set by the Bankruptcy Court pursuant to the Bar Date Order or other Final Order for filing proofs of claim in the Chapter 11 Cases, as the context may require.

32. **"Bar Date Order"** means the order entered by the Bankruptcy Court on March 23, 2010 that established the Bar Date, and any subsequent order supplementing such initial order or relating thereto.

33. **"Business Day"** means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in New York, New York are authorized by law or other governmental action to close.

34. **"Canadian Bar Date Order"** means the order entered by the Canadian Court on March 30, 2010 that established the Canadian bar date, and any subsequent order supplementing such initial order or relating thereto.

35. **"Canadian Court"** means the Court of Queen's Bench of the Province of Alberta, Judicial District of Calgary.

36. **"Canadian Petitioners"** means Trident Exploration Corp., Fort Energy Corp., Fenenergy Corp., 981405 Alberta Ltd and 981422 Alberta Ltd.

37. **"Canadian Plan"** means the Plan of Arrangement and Compromise, a copy of which is attached hereto as Exhibit A, as such plan may be amended, varied or supplemented from time to time in accordance with its terms and the order approving the same. For the avoidance of doubt, the Canadian Plan and all amendments, modifications, and/or supplements thereto shall be in form and on terms acceptable to the Required Backstop Parties.

38. **"Canadian Proceedings"** means the proceedings currently pending before the Canadian Court under the CCAA commenced by the Canadian Petitioners and the Debtors on September 8, 2009, action number 0901-13483.

39. **"Cash"** means legal tender of the United States of America and equivalents thereof.

40. **"Causes of Action"** means any and all actions, proceedings, causes of action, suits, accounts, demands, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment, and claims, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, non-contingent, matured, unmatured, now-owned, hereafter acquired, disputed, undisputed, secured, or unsecured, and whether asserted or assertable directly or derivatively in law, equity, or otherwise, including Avoidance Claims, unless otherwise waived or released by the Debtors, with the consent of the Required Backstop Parties, or the Reorganized

Debtors to the extent such Cause of Action is a Cause of Action held by the Debtors or the Reorganized Debtors.

41. "CCAA" means the Companies' Creditors Arrangement Act (Canada), R.S.C. 1985, c. C-36, as amended.

42. "Chapter 11 Cases" means the cases commenced under chapter 11 of the Bankruptcy Code by the Debtors on the Petition Date in the Bankruptcy Court and being jointly administered with one another under Case No. 09-13150 (MFW), and the phrase "Chapter 11 Case" when used with reference to a particular Debtor means the particular case under chapter 11 of the Bankruptcy Code that such Debtor commenced on the Petition Date in the Bankruptcy Court.

43. "Claims and Noticing Agent" means The Garden City Group, Inc.

44. "Claims/Interests Objection Deadline" means, as applicable (except for Administrative Claims), (a) the day that is the latest of (i) the first Business Day that is at least 180 days after the Effective Date, (ii) as to proofs of claim filed after the Bar Date, the first Business Day that is at least 180 days after a Final Order is entered deeming the late filed claim to be treated as timely filed, or (iii) 30 days after entry of a Final Order overruling all pending objections to such Claim, or (b) such later date as may be established by the Bankruptcy Court upon request of the Reorganized Debtors, without any further notice to other parties-in-interest.

45. "Class" means a category of holders of Claims or Interests as described in ARTICLE III of the Plan.

46. "Commitment Letter" means the Original Commitment Letter and the Amendment to the Original Commitment Letter, as each may be amended from time to time.

47. "Company" means the Debtors and the Canadian Petitioners.

48. "Confirmation Date" means the date of entry of the Confirmation Order.

49. "Confirmation Hearing" means the hearing before the Bankruptcy Court held under section 1128 of the Bankruptcy Code to consider confirmation of the Plan and related matters, as such hearing may be adjourned or continued from time to time.

50. "Confirmation Order" means the order entered by the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code.

51. "Contingent Value Rights" means the right of each Backstop Party, or its designee, that is a holder of 2007 Loan Agreement Claims, to receive its Pro Rata share of 6% of the New Equity issued or issuable upon the Effective Date (on a fully diluted basis subject solely to Pro Rata dilution for any units issuable under any Management Equity Issuance) upon the earlier of (i) the occurrence of certain triggering events (to be agreed between the Backstop Parties that are not holders of 2007 Loan Agreement Claims, the Backstop Parties that are holders of the 2007 Loan Agreement Claims, and the Company) or (ii) the fifth year anniversary of the Effective Date, subject to the condition that the Debtors' total enterprise value at the time of such triggering event or such fifth year anniversary is at least \$966 million.

52. "Contingent Value Rights Certificates" means the certificates for the Contingent Value Rights issued on the Distribution Date, in form and substance satisfactory to the 2007



Backstop Parties which have committed to provide the majority of the 2007 Backstop Commitment and the 2006 Backstop Parties that have committed to provide the majority of the 2006 Backstop Commitment.

53. **"Cross-Border Protocol"** means that certain protocol, approved by final order of the Bankruptcy Court on April 6, 2010 and the Canadian Court on February 23, 2010, which implements basic administrative procedures necessary to coordinate certain activities between the Canadian Proceedings and Chapter 11 Cases to ensure the maintenance of each courts' respective independent jurisdiction and to give effect to the doctrines of comity.

54. **"Data Room"** means the virtual data room operated by Akin Gump Strauss Hauer & Feld LLP entitled "Trident/Advisor".

55. **"Debtors"** means, collectively, the debtors and debtors-in-possession identified on page 2 hereof, and **"Debtor"** means any one of the Debtors.

56. **"Disallowed Claim"** means (a) a Claim, or any portion thereof, that has been disallowed by a Final Order or a settlement, (b) a Claim or any portion thereof that is Scheduled at zero or as contingent, disputed, or unliquidated and as to which a proof of claim bar date has been established but no proof of claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law, or (c) a Claim or any portion thereof that is not Scheduled and as to which a proof of claim bar date has been established but no proof of claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

57. **"Disallowed Interest"** means an Interest or any portion thereof that has been disallowed by a Final Order or a settlement.

58. **"Disbursing Agent"** means Reorganized Debtors, or any Person designated by them, in their sole discretion, to serve as a disbursing agent, or to assist in the making of disbursements, under the Plan.

59. **"Disclosure Statement"** means the written disclosure statement (including all schedules thereto or referenced therein) that relates to the Plan, as such disclosure statement may be amended, modified, or supplemented from time to time, all as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017.

60. **"Disputed Claim"** or **"Disputed Interest"** means, in the case of Claims, a Claim or any portion thereof that is neither an Allowed Claim nor a Disallowed Claim, and in the case of Interests, an Interest or any portion thereof that is neither an Allowed Interest nor a Disallowed Interest.

61. **"Distribution Date"** means the date, selected by the Reorganized Debtors, upon which distributions to holders of Allowed Claims entitled to receive distributions under the Plan shall commence; provided, however, that the Distribution Date shall occur on or as soon as reasonably practicable after the Effective Date.

62. **"Distribution Record Date"** means the date that the Confirmation Order is entered by the Bankruptcy Court.

63. **"Effective Date"** means a Business Day on or after the Confirmation Date specified by the Debtors on which (i) no stay of the Confirmation Order is in effect and (ii) the conditions to the effectiveness of the Plan specified in ARTICLE XII hereof have been satisfied or waived, which date shall be no later than five (5) business days after such conditions have been satisfied or waived; provided, however, that the Debtors, with the consent of the Required Backstop Parties, may defer the occurrence of the Effective Date for a period of no more than fifteen (15) days beyond such date in order to facilitate the closing of the Exit Financing; provided further, however, that the Effective Date shall be no later than July 2, 2010, unless otherwise agreed by (a) the Debtors and (b) each Backstop Party.

64. **"Eligible 2006 Holder"** means each holder, as of the Record Date, of 2006 Credit Agreement Claims who is an Accredited Investor.

65. **"Eligible 2007 Holder"** means each holder, as of the Record Date, of 2007 Loan Agreement Claims who is an Accredited Investor.

66. **"Equity Put Commitment"** has the meaning ascribed to such term in the Original Commitment Letter.

67. **"Equity Put Fee"** has the meaning ascribed to such term in the Commitment Letter.

68. **"Estates"** means the bankruptcy estates of the Debtors created pursuant to section 541 of the Bankruptcy Code.

69. **"Exhibit"** means an exhibit annexed either to the Plan or to the Disclosure Statement.

70. **"Exit Financing"** means the credit facility to be entered into pursuant to the Exit Financing Agreement, along with any other financing commitment or agreement (including but not limited to any asset based loan) entered into prior to or as of the Effective Date.

71. **"Exit Financing Agreement"** means that agreement to be executed by Reorganized TRC on or before the Effective Date, including all agreements, amendments, supplements or documents related thereto, which provides for an exit credit facility in an aggregate principal amount of not less than \$410 million, which, if not filed as part of the Plan Supplement, the substantially final form of which shall be consistent with the Exit Financing Term Sheet or Commitment Letter filed as part of the Plan Supplement and acceptable to the Debtors and the Required Backstop Parties.

72. **"Exit Financing Term Sheet"** means the term sheet, which sets forth the Exit Financing commitment and the terms and conditions thereof, which may be filed as part of the Plan Supplement and shall be acceptable to the Required Backstop Parties.

73. **"Expense Reimbursement"** has the meaning ascribed to it in the Original Commitment Letter.

74. **"Face Amount"** means, (a) when used in reference to a Disputed Claim or Disallowed Claim, the full stated liquidated amount claimed by the holder of a Claim in any proof of claim timely filed with the Bankruptcy Court or otherwise deemed timely filed by any Final Order of the Bankruptcy Court or other applicable bankruptcy law, and (b) when used in reference to an Allowed Claim, the allowed amount of such Claim.

75. **"Fee Claim"** means a Claim under sections 328, 330(a), 331, 503 OR 1103 of the Bankruptcy Code.

76. **"Final Order"** means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Chapter 11 Cases or the docket of any other court of competent jurisdiction, that has not been reversed, stayed, vacated, modified or amended, and as to which the time to appeal or petition for certiorari or move for a new trial, reargument or rehearing has expired, and as to which no appeal or petition for certiorari or other proceeding for a new trial, reargument or rehearing that has been timely taken is pending, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing shall have been denied or resulted in no modification of such order.

77. **"Guarantee"** means each guarantee under the 2006 Credit Agreement and 2007 Loan Agreement.

78. **"General Unsecured Claims"** means all general unsecured claims against the Debtors, excluding any deficiency claims under the 2006 Credit Agreement.

79. **"Impaired"** refers to any Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

80. **"Incremental Purchase Price"** shall have the meaning ascribed to it in the Amendment to the Original Commitment Letter, which shall range from \$0.00 to \$55 million, calculated in accordance with the Amendment to the Original Commitment Letter.

81. **"Indemnification Provisions"** means the indemnification provisions currently in place for directors and officers whether in the bylaws, certificates of incorporation or other formation documents in the case of a limited liability company, board resolutions or indemnification agreements, provided that such documents are identified in the Data Room as of 20 calendar days prior to the Confirmation Hearing.

82. **"Intercompany Claim"** means a Claim by a Debtor against another Debtor or affiliated non-Debtor.

83. **"Interim Compensation Order"** means that certain order of the Bankruptcy Court allowing Professionals to seek interim compensation in accordance with the compensation procedures approved therein, as may have been modified by a Bankruptcy Court order approving the retention of Professionals.

84. **"Interest"** means the legal, equitable, contractual, and other rights of any Person with respect to the common stock, preferred stock or any other equity securities of, or ownership interests in, each of the Debtors.

85. **"IRC"** means the Internal Revenue Code of 1986, as amended.

86. **"Judicial Code"** means title 28 of the United States Code, 28 U.S.C. §§ 1-4001.

87. **"Junior Creditor Rights"** has the meaning ascribed to it in Article 6.7(c).

88. **“Management Equity Issuance”** means up to 7.5% of the equity of Reorganized TRC or Newco on a fully diluted basis as of the Effective Date reserved for issuance under the Management Equity Incentive Plan.

89. **“Management Equity Incentive Plan”** means that certain post-Effective Date management equity incentive plan, the form of which shall be included in the Plan Supplement, which shall consist of the Management Equity Issuance.

90. **“Mineral Leases”** means any leases by which the Debtors are granted the right to explore for and produce minerals, including liquid or gaseous hydrocarbons, oil and gas.

91. **“Monitor”** means FTI Consulting, Canada ULC in its capacity as the monitor appointed by the Canadian Court in the Canadian Proceedings.

92. **“New Board”** means the initial board of directors of Reorganized TRC which shall be disclosed in the Plan Supplement and which shall be constituted as provided in Article VI of this Plan.

93. **“New Equity”** means newly issued shares or membership interests (as applicable) of Reorganized TRC (or, if applicable, Newco), par value \$0.01 per unit, to be issued on the Effective Date.

94. **“New Governance Documents”** means the corporate governance documents of the Reorganized Debtors, and, if applicable, Newco, which may include new certificates of incorporation, new bylaws and/or other organizational documents, as applicable, which shall be acceptable to the Required Backstop Parties, the forms of which will be included in the Plan Supplement.

95. **“New Money Investor”** means each Eligible 2006 Holder and Eligible 2007 Holder that exercises its Subscription Rights in connection with the Rights Offering.

96. **“New Equity Agreement”** means a new shareholders’ agreement, membership agreement, or such other similar agreement to be executed on or before the Effective Date providing for, among other things, the rights and obligations of the holders of the New Equity, the form of which will be included in the Plan Supplement and acceptable to the Required Backstop Parties.

97. **“Newco”** means a newly formed entity that may be created by TRC or Reorganized TRC pursuant to the Restructuring Transactions, to which TRC (or Reorganized TRC, as applicable) would contribute all of its assets (including equity interests) or which would become the owner of all the equity interests of Reorganized TRC.

98. **“Ordinary Course Professionals Order”** means the order entered by the Bankruptcy Court on October 5, 2009 authorizing the retention of professionals utilized by the Debtors in the ordinary course of business.

99. **“Original Commitment Letter”** means that certain agreement, dated February 22, 2010, among the Debtors and the Backstop Parties, copies of which are attached hereto as Exhibit B-1.

100. **“Other Priority Claims”** means all claims against the Debtors accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than Administrative Claims or Priority Tax Claims.

101. **"Other Secured Claims"** means a Secured Claim against the Debtors, other than Priority Tax Claims and 2006 Credit Agreement Claims.

102. **"Person"** means an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization, governmental unit (as defined in section 101(27) of the Bankruptcy Code), or other entity.

103. **"Petition Date"** means September 8, 2009.

104. **"Plan"** means this second amended joint plan of reorganization for the Debtors, including all exhibits attached hereto or referenced herein, as the same may be amended, modified or supplemented in accordance with its terms.

105. **"Plan Supplement"** means the compilation of documents and forms of documents, schedules, attachments and exhibits to the Plan, to be filed by the Debtors, each of which shall be satisfactory to the Required Backstop Parties, by the Plan Supplement Filing Date, comprised of, without limitation, the following: (a) the New Governance Documents; (b) the identity of the members of the new boards of directors for the Debtors and the Canadian Petitioners and the nature and compensation for any director who is an "insider" under the Bankruptcy Code; (c) the Rejected Executory Contract and Unexpired Lease List; (d) the New Equity Agreement; (e) the Registration Rights Agreement; (f) the Exit Financing Agreement, Exit Financing Term Sheet or a commitment letter to provide the Exit Financing; (g) a list of retained Causes of Action; (h) the Contingent Value Rights Certificates; (i) the Management Equity Incentive Plan; and (j) a schedule of those employment agreements with members of existing senior management and/or other employees that shall be assumed, which shall include the existing employments with the Company's Chief Executive Officer and Chief Financial Officer; and all exhibits, attachments, supplements, annexes, schedules, and ancillary documents related to each of the foregoing.

106. **"Plan Supplement Filing Date"** means the date on which the Plan Supplement shall be filed with the Bankruptcy Court, which date shall be at least ten days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Court without further notice.

107. **"Prepetition Agents"** means, collectively, the 2006 Agent and the 2007 Agent.

108. **"Priority Tax Claim"** means any unsecured Claim entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code.

109. **"Professional Fees Bar Date"** means the Business Day that is thirty (30) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

110. **"Pro Rata"** means, at any time, the proportion that the Face Amount of an Allowed Claim in a particular Class bears to the aggregate Face Amount of all Allowed Claims in such Class, unless the Plan provides otherwise. Until all Disputed Claims in any Class are resolved, such Disputed Claims shall be treated as Allowed Claims in their Face Amount for the purposes of calculating the Pro Rata distribution of property to the holders of Allowed Claims in such Class.

111. **"Professional"** means (a) any Person retained in the Chapter 11 Cases by separate Bankruptcy Court order pursuant to sections 327 and 1103 of the Bankruptcy Code or (b) any Person seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code; provided, however, that Professional does not include any Person retained pursuant to the Ordinary Course Professionals Order.

112. **“Professional Claim”** means an Administrative Claim of a Professional for compensation for services rendered or reimbursement of costs, expenses, or other charges and disbursements incurred relating to services rendered or expenses incurred on or after the Petition Date and prior to and including the Effective Date.

113. **“Professional Fee Order”** means the order entered by the Bankruptcy Court on January 28, 2010, authorizing the interim payment of Professional Claims.

114. **“Record Date”** means the date for determining which holders of Claims and Interests are entitled to receive the Disclosure Statement and vote to accept or reject the Plan, as applicable, which date is May [5], 2010, as set forth in the Order approving the Disclosure Statement.

115. **“Registration Rights Agreement”** means the Registration Rights Agreement, dated as of the Effective Date, among certain holders of New Equity and Reorganized TRC, the form of which will be included in the Plan Supplement and shall be acceptable to the Required Backstop Parties.

116. **“Reinstated”** or **“Reinstatement”** means rendering a Claim or Interest Unimpaired. Unless the Plan specifies a particular method of Reinstatement, when the Plan provides that a Claim or Interest will be Reinstated, such Claim or Interest will be Reinstated, at the Debtors’ sole discretion, in accordance with one of the following: (a) the legal, equitable and contractual rights to which such Claim or Interest entitles the holder will be unaltered; or (b) notwithstanding any contractual provisions or applicable law that entitles the holder of such Claim or Interest to demand or receive accelerated payment of such Claim or Interest after the occurrence of a default: (i) any such default that occurred before or after the commencement of the applicable Chapter 11 Case, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code, will be cured; (ii) the maturity of such Claim or Interest as such maturity existed before such default will be reinstated; (iii) the holder of such Claim or Interest will be compensated for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; (iv) if such Claim arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, the holder of such Claim will be compensated for any actual pecuniary loss incurred by such holder as a result of such failure; and (v) the legal, equitable or contractual rights to which such Claim or Interest entitles the holder of such Claim or Interest will not otherwise be altered.

117. **“Rejected Executory Contract and Unexpired Lease List”** means the list (as may be amended), as determined by the Debtors and acceptable to the Required Backstop Parties of executory contracts and unexpired leases (including any amendments or modifications thereto) that will be rejected by the Debtors pursuant to the provisions of Article VII hereof.

118. **“Release Obligor”** has the meaning ascribed to it in Article 11.5 of the Plan.

119. **“Released Parties”** means, collectively, (a) each current and former officer of the Debtors, all members of the boards of directors of the Debtors, current employees of the Debtors, and current professional advisors to the Debtors, in each case in their respective capacities; (b) all Professionals retained by the Debtors in the Chapter 11 Cases; (c) the Prepetition Agents, in their capacity as such; (d) the Backstop Parties, in their capacity as such; (e) the New Money Investors, in their capacity as such; (f) all holders of Claims who vote to accept the Plan; and (g) with respect to each of the Debtors and the above-named Persons, such Person’s affiliates, advisors, principals, employees, officers, directors, representatives, members, financial advisors, attorneys, accountants, investment bankers, consultants, agents, and other representatives and professionals, solely in such capacity.

120. **“Reorganized Debtor”** or **“Reorganized Debtors”** means, individually, any Debtor and, collectively, all Debtors, as reorganized under and pursuant to the Plan, or any successor thereto, by merger, consolidation, transfer of substantially all assets or otherwise, on and after the Effective Date.

121. **“Reorganized TRC”** means Trident Resources Corp., as reorganized under and pursuant to the Plan, or any successor thereto, by merger, consolidation, transfer of substantially all assets or otherwise, on and after the Effective Date.

122. **“Required Backstop Parties”** means the Backstop Parties that have committed to provide, in aggregate, at least 80% of the Equity Put Commitment pursuant to the Commitment Letter.

123. **“Restructuring Transactions”** means any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including, but not limited to, the consolidation, merger, recapitalization, contribution of assets, formation of Newco, the liquidation or dissolution of a Debtor, loan or infusion of capital into any parent or subsidiary corporation, the Rights Offering, or other transaction in which a Debtor or Newco merges with, transfers some or substantially all of its assets or liabilities to, or issues stock or indebtedness to, another Debtor or Newco, entity or affiliate (including but not limited to Newco), on or following the Confirmation Date.

124. **“Retained Actions”** means all Claims, Causes of Action, rights of action, suits, and proceedings, whether in law or in equity, whether known or unknown, which any Debtor or any Debtor’s Estate may hold against any Person, other than the Released Parties.

125. **“Rights Offering”** means the offering of the Subscription Rights by the Debtors to the Holders of the 2006 Credit Agreement Claims and 2007 Loan Agreement Claims in accordance with the Rights Offering Procedures and the Plan.

126. **“Rights Offering Amount”** means the aggregate purchase price of (a) \$200 million plus (b) the Incremental Purchase Price.

127. **“Rights Offering Equity”** means 60% of the New Equity, subject to dilution resulting from the Equity Put Fee (to the extent such fee is not waived by any of the Backstop Parties), the Management Equity Issuance and the Contingent Value Rights.

128. **“Rights Offering Procedures”** means those certain Rights Offering Procedures, setting forth the terms and conditions of the Rights Offering, in substantially the form attached hereto as Exhibit C.

129. **“Sanction Order”** means the order of the Canadian Court under the CCAA approving the Canadian Plan in the Canadian Proceedings which shall be in form and on terms acceptable to the Required Backstop Parties.

130. **“Scheduled”** means, with respect to any Claim, the status, priority, and amount, if any, of such Claim as set forth in the Schedules.

131. **“Schedules”** means the schedules of assets and liabilities and the statements of financial affairs filed in the Chapter 11 Cases by the Debtors, which incorporate by reference the global notes and statement of limitations, methodology, and disclaimer regarding the Debtors’ schedules and statements, as such schedules or statements have been or may be further modified, amended, or

supplemented from time to time in accordance with Bankruptcy Rule 1009 or orders of the Bankruptcy Court.

132. **"Second Lien Credit Agreement"** means that certain Secured Term Loan Agreement dated as of April 25, 2006, as amended from time to time, among TEC, certain of its subsidiaries, Credit Suisse, Toronto Branch, as administrative agent and collateral agent, and the lenders party thereto.

133. **"Second Lien Credit Agreement Obligations"** means the obligations arising under the Second Lien Credit Agreement.

134. **"Secured Claim"** means a Claim, secured by a security interest in or a lien on property in which a Debtor's Estate has an interest, which security interest or lien is valid, perfected and enforceable pursuant to applicable law or by reason of a Final Order, or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value, as of the Effective Date or such other date as is established by the Bankruptcy Court, of such Claim holder's interest in the applicable Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined by a Final Order of the Bankruptcy Court pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code.

135. **"Securities Act"** means the Securities Act of 1933, as now in effect or hereafter amended.

136. **"Senior Creditor Rights"** has the meaning ascribed to it in Article 6.7.

137. **"SISP"** means that certain sale and investor solicitation process approved by the Bankruptcy Court and the Canadian Court on February 23, 2010.

138. **"Solicitation Procedures Order"** means the order entered by the Bankruptcy Court on May [5], 2010 approving the Disclosure Statement and authorizing the procedures by which solicitation of votes on the Plan is to take place, among other matters. For the avoidance of doubt, the Solicitation Procedures Order and all amendments, modifications, and/or supplements thereto shall be in form and substance acceptable to the Required Backstop Parties and shall provide that each holder of an Allowed Claim in Class 4 or Class 5 shall have the right to change its vote based upon the results of the Auction until 72 hours after the conclusion of the Auction in accordance with the order approving the Solicitation Procedures.

139. **"Subscription Rights"** means the non-certified subscription rights to purchase units of New Equity in connection with the Rights Offering on the terms and subject to the conditions set forth in Article 6.7.

140. **"Tail Coverage"** means, reasonable and customary tail liability policies for the directors and officers of the Company obtained prior to the Effective Date on terms and conditions set forth in the Term Sheet.

141. **"TEC"** means Trident Exploration Corp.

142. **"Term Sheet"** means that certain restructuring term sheet attached as an exhibit to the Commitment Letter.



143. "TRC" means Trident Resources Corp.

144. "Unimpaired" means, with respect to a Claim, any Claim that is not Impaired.

145. "Unsubscribed Units" means those units of New Equity issued in connection with the Rights Offering that are not subscribed for pursuant to the Rights Offering.

146. "Voting Deadline" means June 4, 2010, at 4:00 p.m. (prevailing Eastern Time), provided that any holder of claims in Classes 4 or 5 shall have the right to change its vote by providing written notice to the Voting Agent and the Debtors within 72 hours of the conclusion of the Auction, as provided in the Solicitation Procedures Order.

**C. Rules of Interpretation.**

For purposes of the Plan, unless otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (b) each pronoun stated in the masculine, feminine, or neuter includes the masculine, feminine, and neuter; (c) any reference in the Plan to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified, or supplemented; (d) any reference to an entity as a holder of a Claim or Interest includes that entity's successors and assigns; (e) all references in the Plan to Sections, Articles, and Exhibits are references to Sections, Articles, and Exhibits of or to the Plan; (f) the words "herein," "hereunder," and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (g) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (h) subject to the provisions of any contract, certificates of incorporation, bylaws, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules; and (i) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply.

**D. Computation of Time.**

In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply.

**E. References to Monetary Figures.**

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided.

**F. Plan Supplement.**

All Plan Supplement documents are incorporated into and are a part of the Plan as if set forth in full herein. All Plan Supplement documents shall be filed with the Bankruptcy Court on or before the Plan Supplement Filing Date. After the Plan Supplement Filing Date, copies of the Plan Supplement documents may be obtained upon written request to: TRD Bankruptcy Administration, c/o The Garden City Group, Inc., P.O. Box 9545, Dublin, OH 43017-4845 or by downloading such exhibits from the Debtors' informational website at <http://www.tridentrestructuring.com>. To the extent any Plan Supplement document is inconsistent with the terms of the Plan and unless otherwise provided for in the Confirmation Order, the terms of the Plan Supplement document shall control as to the transactions

contemplated thereby and the terms of the Plan shall control as to any Plan provision that may be required under the Plan Supplement document.

## ARTICLE II

### ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims set forth in ARTICLE III.

#### 2.1 Administrative Claims.

Except to the extent that a holder of an Allowed Administrative Claim agrees to a less favorable treatment, the Debtors shall pay to such holder Cash in an amount equal to such Claim on, or as soon thereafter as is reasonably practicable, the earlier of (a) the Distribution Record Date or (b) the date when an Administrative Claim becomes payable pursuant to an order of the Bankruptcy Court or any agreement between a Debtor (or a Reorganized Debtor) and the holder of such Administrative Claim, or in either case, such other date as the holder of such Allowed Administrative Claim and the applicable Reorganized Debtor may agree; provided, however, that Allowed Administrative Claims representing liabilities incurred in the ordinary course of business by the Debtors, as debtors in possession, or liabilities arising under loans or advances to or other obligations incurred by the Debtors, as debtors in possession, whether or not incurred in the ordinary course of business, shall be paid by the Debtors in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions; provided further, that in no event shall a post-petition obligation that is contingent or disputed and subject to liquidation through pending or prospective litigation, including, but not limited to, alleged obligations arising from personal injury, property damage, products liability, consumer complaints, employment law (excluding claims arising under workers' compensation law), secondary payor liability, or any other disputed legal or equitable claim based on tort, statute, contract, equity, or common law, be considered to be an obligation which is payable in the ordinary course of business.

#### 2.2 Priority Tax Claims.

Commencing on the Distribution Date occurring after the later of (a) the date a Priority Tax Claim becomes an Allowed Priority Tax Claim or (b) the date a Priority Tax Claim first becomes payable pursuant to any agreement between a Debtor (or a Reorganized Debtor) and the holder of such Priority Tax Claim, at the sole option of the Debtors (or the Reorganized Debtors), such holder of an Allowed Priority Tax Claim shall be entitled to receive, on account of such Priority Tax Claim, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Priority Tax Claim, (i) Cash equal to the unpaid portion of such Allowed Priority Tax Claim, (ii) treatment in any other manner such that its Allowed Priority Tax Claims shall not be Impaired, including periodic payments on a quarterly basis over a period ending not later than 5 years after the Petition Date, in accordance with the provisions of sections 511 and 1129(a)(9)(C) of the Bankruptcy Code, or (iii) such other treatment as to which the Reorganized Debtor and such holder shall have agreed upon in writing.

## ARTICLE III

### CLASSIFICATION OF CLAIMS AND INTERESTS

#### 3.1 General Rules of Classification.

(a) Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims against and Interests in the Debtors. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims, as described above, have not been classified and are not entitled to vote on the Plan. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date.

(b) The Debtors shall be treated as if they were consolidated solely for Plan voting, confirmation and distribution purposes as described in Article 6.2; provided, however, that if any Class of Impaired Claims votes to reject the Plan, the Debtors' ability to confirm the Plan with respect to such rejecting Class pursuant to the cramdown standards of section 1129(b) of the Bankruptcy Code will be determined by reference to the treatment to which the holders of Claims in such Class would be entitled were (i) their Claims limited to the specific Debtor(s) that are liable for such Claims, and (ii) the Debtors not treated as consolidated for distribution and confirmation purposes. This limited consolidation treatment is designed to consensually pool the assets and liabilities by the Debtors solely to implement the settlements and compromises reached by the primary constituencies in the Chapter 11 Cases and the Canadian Proceedings.

#### 3.2 Classification of Claims and Interests.

The following table designates the classes of Claims against and Interests in the Debtors and specifies which of those classes are (i) Impaired or Unimpaired by the Plan, (ii) entitled to vote to accept or reject the Plan, and (iii) either deemed to accept or reject the Plan. A Claim or Interest is designated in a particular class only to the extent it falls within the description of that class, and is classified in any other class to the extent that a portion thereof falls within the description of such other class.

Class	Designation	Treatment	Entitled to Vote
1	Other Priority Claims	Unimpaired	No (deemed to accept)
2	Other Secured Claims	Unimpaired	No (deemed to accept)
3	General Unsecured Claims	Impaired	No (deemed to reject)
4	2006 Credit Agreement Claims	Impaired	Yes
5	2007 Loan Agreement Claims	Impaired	Yes
6	Interests in TRC	Impaired	No (deemed to reject)

Class	Designation	Treatment	Entitled to Vote
7	Affiliated Debtor Interests	Unimpaired	No (deemed to accept)
8	Intercompany Claims	Unimpaired	No (deemed to accept)

## ARTICLE IV

### TREATMENT OF CLAIMS AND INTERESTS

#### 4.1 Class 1 (Other Priority Claims).

(a) *Classification:* Class 1 consists of Other Priority Claims.

(b) *Treatment:* Except to the extent that a holder of an Allowed Other Priority Claim (i) has been paid by the Debtors, in whole or in part, prior to the Effective Date or (ii) agrees to a less favorable treatment, each holder of an Allowed Other Priority Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for such Other Priority Claim, Cash in the full amount of such Allowed Other Priority Claim.

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

#### 4.2 Class 2 (Other Secured Claims).

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

(b) *Treatment:* Except to the extent that a holder of an Allowed Other Secured Claim agrees to a less favorable treatment, at the option of the Debtors (with the consent of the Required Backstop Parties which consent shall not be unreasonably withheld) or the Reorganized Debtors, (i) each Allowed Other Secured Claim shall be reinstated and Unimpaired in accordance with section 1124(2) of the Bankruptcy Code, or (ii) each holder of an Allowed Other Secured Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Other Secured Claim, either (w) Cash in the full amount of such Allowed Other Secured Claim, including any postpetition interest accrued pursuant to section 506(b) of the Bankruptcy Code, (x) the proceeds of the sale or disposition of the collateral securing such Allowed Other Secured Claim to the extent of the value of the holder's secured interest in such collateral, (y) the collateral securing such Allowed Other Secured Claim and any interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, or (z) such other distribution as necessary to satisfy the requirements of section 1129 of the Bankruptcy Code.

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

**4.3 Class 3 (General Unsecured Claims).**

(a) *Classification:* Class 3 consists of General Unsecured Claims.

(b) *Treatment:* Holders of General Unsecured Claims shall receive no property under the Plan and such General Unsecured Claims shall be deemed cancelled as of the Effective Date.

(c) *Voting:* Holders of General Unsecured Claims are Impaired. Each holder of a General Unsecured Claim is deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, and is not entitled to vote to accept or reject the Plan.

**4.4 Class 4 (2006 Credit Agreement Claims).**

(a) *Classification:* Class 4 consists of 2006 Credit Agreement Claims.

(b) *Allowance:* The 2006 Credit Agreement Claims shall be Allowed and be deemed Allowed in an amount of no less than \$422.34 million on account of outstanding loans under the 2006 Credit Agreement.

(c) *Treatment:* Each holder of 2006 Credit Agreement Claims shall receive, on the Distribution Date, in full and final satisfaction of the 2006 Credit Agreement Claims, its Pro Rata share of (a) the 2006 New Equity and (b) the Senior Creditor Rights.

(d) *Voting:* Holders of 2006 Credit Agreement Claims are Impaired. Therefore, each holder of a 2006 Credit Agreement Claim is entitled to vote to accept or reject the Plan.

**4.5 Class 5 (2007 Loan Agreement Claims).**

(a) *Classification:* Class 5 consists of 2007 Loan Agreement Claims.

(b) *Allowance:* The 2007 Loan Agreement Claims shall be Allowed and be deemed Allowed in an amount of no less than \$137.1 million on account of outstanding loans under the 2007 Loan Agreement.

(c) *Treatment:* Each holder of 2007 Loan Agreement Claims shall receive, on the Distribution Date, in full and final satisfaction of the 2007 Loan Agreement Claims, its Pro Rata share of the Junior Creditor Rights.

(d) *Voting:* Holders of 2007 Loan Agreement Claims are Impaired. Each holder of a 2007 Loan Agreement Claim is entitled to vote to accept or reject the Plan.

**4.6 Class 6 (Interests in TRC).**

(a) *Classification:* Class 6 consists of Interests in TRC.

(b) *Treatment:* Holders of Interests in Class 6 shall receive no property under the Plan and such Interests shall be cancelled as of the Effective Date.

(c) *Voting:* Holders of Interests in TRC are Impaired. Holders of Interests in TRC are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Plan.

**4.7 Class 7 (Affiliated Debtor Interests).**

(a) *Classification:* Class 7 consists of Interests in the Affiliated Debtors.

(b) *Treatment:* On the Effective Date, the Affiliated Debtor Interests shall remain effective and outstanding and, except as otherwise expressly provided in this Plan, be owned and held by the same applicable Person(s) that held and/or owned such Affiliated Debtor Interests immediately prior to the Effective Date.

(c) *Voting:* Class 7 is Unimpaired, and the holders of Affiliated Debtor Interests are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Affiliated Debtor Interests are not entitled to vote to accept or reject the Plan.

**4.8 Class 8 (Intercompany Claims).**

(a) *Classification:* Class 8 consists of all Intercompany Claims.

(b) *Treatment:* On the Effective Date, each Allowed Intercompany Claim shall be Reinstated except as otherwise agreed to by the Debtors, with the consent of the Required Backstop Parties. After the Effective Date, the Reorganized Debtors shall have the right to resolve or compromise Allowed Intercompany Claims without approval of the Bankruptcy Court.

(c) *Voting:* Class 8 is Unimpaired, and the holders of Intercompany Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Intercompany Claims are not entitled to vote to accept or reject the Plan.

**ARTICLE V**

**ACCEPTANCE OR REJECTION OF THE PLAN**

**5.1 Impaired Classes of Claims Entitled to Vote.**

Except as otherwise provided in order(s) of the Bankruptcy Court pertaining to solicitation of votes on the Plan and Article 5.4 of the Plan, holders of Claims in each Impaired Class are entitled to vote in their respective classes as a class to accept or reject the Plan.

**5.2 Classes Deemed to Accept the Plan.**

Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 7 (Affiliated Debtor Interests), and Class 8 (Intercompany Claims) are Unimpaired under the Plan. Therefore, such Classes are conclusively presumed to have accepted the Plan. The votes of holders of Claims and Interests in such Classes shall not be solicited.

**5.3 Acceptance by Impaired Classes.**

Classes 4 and 5 are Impaired and entitled to vote under the Plan. Pursuant to section 1126(c) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted the Plan if the Plan is accepted by the holders of at least two-thirds in dollar

amount and more than one-half in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject the Plan.

#### **5.4 Classes Deemed to Reject the Plan.**

Classes 3 and 6 will not receive or retain any property under the Plan on account of their Claims or Interests. Pursuant to section 1126(g) of the Bankruptcy Code, these classes will be conclusively presumed to have rejected the Plan.

#### **5.5 Confirmation without Acceptance by All Impaired Classes.**

The Debtors request Confirmation under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that has not accepted or is deemed not to have accepted the Plan pursuant to section 1126 of the Bankruptcy Code. The Debtors' ability to confirm the Plan with respect to rejecting Classes pursuant to the cramdown standards of section 1129(b) of the Bankruptcy Code shall be determined as if the Debtors have not been treated as if consolidated for voting, distribution or confirmation purposes, with all Claims (including Intercompany Claims) against each Debtor and all Interests in each Debtor treated as separate and distinct Claims or Interests against or in such Debtor, as applicable (in each case, entitled to a separate recovery with respect to each such Debtor, as applicable) but not as Claims against any other Debtor not otherwise liable on account of such Claims or as Interests in any other Debtor, as applicable.

### **ARTICLE VI**

#### **MEANS FOR IMPLEMENTATION OF THE PLAN**

##### **6.1 Continued Corporate Existence.**

Subject to any Restructuring Transaction, each of the Debtors and, if applicable, Newco, shall continue to exist after the Effective Date as a separate entity, with all the powers of a corporation, limited liability company, or partnership, as the case may be, under applicable law in the jurisdiction in which each applicable Debtor is incorporated or otherwise formed and pursuant to its certificate of incorporation and bylaws or other organizational documents in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws or other organizational documents are amended and restated or reorganized by the Plan or the Canadian Plan, as applicable, without prejudice to any right to terminate such existence (whether by merger or otherwise) under applicable law after the Effective Date. There are certain Affiliates of the Debtors that are not Debtors in these Chapter 11 Cases. Affiliates that are not Debtors in these chapter 11 cases have no independent debt obligations and do not serve as guarantors for any obligations of any Debtor or non-Debtor Affiliate. The continued existence, operation, and ownership of such non-Debtor Affiliates is a component of the Debtors' businesses, and, unless otherwise provided herein, all of the Debtors' equity interests and other property interests in such non-Debtor Affiliates shall revert in the applicable Reorganized Debtor or its successor on the Effective Date.

##### **6.2 Limited Consolidation for Voting, Confirmation and Distribution**

**Purposes.**

(a) Pursuant to the Confirmation Order, and subject to the provisions of Article 5.5 of the Plan, the Bankruptcy Court shall approve the Debtors' election to treat the Estates as if they were consolidated solely for the purpose of voting, confirmation and distributions to be made under the Plan. Accordingly, for purposes of implementing the Plan, pursuant to such order: (1) all assets and liabilities of the Debtors shall be treated as if they are pooled; and (2) with respect to any guarantees by

one Debtor of the obligations of any other Debtor, and with respect to any joint or several liability of any Debtor with any other Debtor, the holder of any Claims for such obligations will receive a single recovery on account of any such joint obligations of the Debtors.

(b) Such election to treat the Estates as if they were consolidated solely for the purpose of implementing the Plan shall not affect: (1) the legal and corporate structures of the Debtors, subject to the right of the Debtors to effect the Restructuring Transactions contemplated pursuant to the Plan; (2) pre- and post-Effective Date guarantees, liens and security interests that are required to be maintained (a) in connection with contracts or leases that were entered into during the Chapter 11 Cases or executory contracts and unexpired leases that have been or will be assumed or (b) pursuant to the Plan; (3) Interests between and among the Debtors; (4) distributions from any insurance policies or proceeds of such policies; (5) preservation of the separate Estates for purposes of confirmation to the extent provided in Article 5.5 of the Plan and (6) the revesting of assets in the separate Reorganized Debtors pursuant to Article 11.1 of the Plan. In addition, such election to treat the Estates as consolidated for the purpose of implementing the Plan will not constitute a waiver of the mutuality requirement for setoff under section 553 of the Bankruptcy Code, except to the extent otherwise expressly waived by the Debtors.

(c) The Plan serves as a motion seeking entry of an order allowing the Debtors to treat the Estates as if consolidated solely for purposes of voting, confirmation and distributions under the Plan, and to that end, pooling the assets and liabilities of the Debtors solely for the purposes of implementing the Plan, as described and to the limited extent set forth in Article 6.2(a) and (b) of the Plan. Unless an objection to such election is made in writing by any creditor affected by the Plan, filed with the Bankruptcy Court and served on the parties listed in Article 14.10 of the Plan on or before five days before either the Voting Deadline or such other date as may be fixed by the Bankruptcy Court, such order (which may be the Confirmation Order) may be entered by the Bankruptcy Court. In the event any such objections are timely filed, a hearing with respect thereto will occur at or before the Confirmation Hearing. Notwithstanding anything to the contrary in the Plan, nothing therein shall affect the obligation of each and every Debtor to pay quarterly fees to the Office of the United States Trustee in accordance with 28 U.S.C. §1930.

(d) In the event that the Bankruptcy Court does not approve the Debtors' election to treat the Estates as if they are consolidated solely for voting, confirmation and distribution purposes, (a) the Plan shall be treated as a separate plan of reorganization for each Debtor, and (b) the Debtors shall not be required to re-solicit votes with respect to the Plan.

### **6.3 Restructuring Transactions.**

On or following the Confirmation Date, the Debtors or the Reorganized Debtors, as the case may be, shall take such actions as may be necessary or appropriate to effect the Restructuring Transactions. Such actions may include, without limitation: (a) the execution and delivery of appropriate agreements or other documents of merger, consolidation, or reorganization containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law (and, in all events, that are satisfactory to the Required Backstop Parties); (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, guaranty, or delegation of any property, right, liability, duty, or obligation on terms consistent with the terms of the Plan and acceptable to the Required Backstop Parties; (c) the filing of appropriate certificates of incorporation, merger, or consolidation with the appropriate governmental authorities under applicable law which, in all events, are acceptable to the Required Backstop Parties; (d) the formation of Newco, if applicable, subject to the consent of the Required Backstop Parties; and (e) all other actions that such Debtors, with the consent of the Required Backstop Parties, or the Reorganized Debtors, determine are necessary or appropriate, including, without limitation, the making of appropriate filings and/or recordings in respect of the Restructuring Transactions, including



without limitation, with respect to the Rights Offering; provided, however, the Company shall have arranged for the applicable proceeds of the Rights Offering and/or Exit Financing that are to be loaned or contributed to TEC pursuant to the Restructuring Transactions to be loaned or contributed in tax efficient manner acceptable to the Required Backstop Parties. The form of each Restructuring Transaction shall be determined by the boards of directors of the Debtors with the consent of the Required Backstop Parties, or the Reorganized Debtors. For the avoidance of doubt, any Restructuring Transaction that would result in a change in the corporate or legal structure of any Debtor, the creation of Newco, the liquidation or dissolution of any Debtor, or the consolidation, merger, recapitalization, or contribution of assets of a Debtor into another Debtor, Newco, or other entity must be acceptable to the Required Backstop Parties. In the event a Restructuring Transaction is a merger transaction, upon the consummation of such Restructuring Transaction, each party to such merger shall cease to exist as a separate corporate entity and thereafter the surviving Reorganized Debtor or affiliate of any of the Debtors organized as part of the Restructuring Transactions shall assume and perform the obligations of each merged Debtor under the Plan. In the event a Reorganized Debtor is liquidated, the Reorganized Debtor(s) which owned the equity interests of such liquidating Debtor prior to such liquidation shall assume and perform the obligations of such liquidating Debtor. Implementation of the Restructuring Transactions shall not affect the distributions under the Plan. On the Effective Date, the Reorganized Debtors shall be authorized to execute and deliver the Exit Financing Agreement, as well as execute, deliver, file, record and issue any notes, guarantees, documents (including, Uniform Commercial Code financing statements) or agreements in connection therewith, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation or rule or the vote, consent, authorization or approval of any Person.

#### **6.4 Corporate Governance.**

##### **(a) New Governance Documents.**

On or immediately before the Effective Date, the Reorganized Debtors and, if applicable, Newco, will file their respective organizational documents with the applicable secretaries of state and/or other applicable authorities in their respective states of incorporation or formation in accordance with the laws in the respective states of incorporation or formation. The New Governance Documents shall amend or succeed the certificates or articles of incorporation, by-laws, membership agreements, partnership agreements and/or other organizational documents of the Debtors to satisfy the provisions of this Plan and the Bankruptcy Code, and shall (i) include, among other things, pursuant to section 1123(a)(6) of the Bankruptcy Code, a provision prohibiting the issuance of non-voting equity securities, but only to the extent required by section 1123(a)(6) of the Bankruptcy Code; (ii) authorize the issuance of New Equity in a amount not less than the amount necessary to permit the distributions thereof required or contemplated by this Plan; (iii) to the extent necessary or appropriate, include restrictions on the transfer of New Equity; and (iv) to the extent necessary to appropriate, include such provisions as may be needed to effectuate and consummate this Plan and the transactions contemplated herein. After the Effective Date, the Reorganized Debtors may amend and restate their respective New Governance Documents as permitted by the laws of their respective states of incorporation or formation and their respective New Governance Documents.

##### **(b) New Equity Agreement.**

Upon the Effective Date and as a condition to receiving their units of New Equity, all holders of New Equity shall enter into the New Equity Agreement. Prior to any subsequent initial public offering of the New Equity, future equity holders of TRC, including holders of units to be issued pursuant to the Management Equity Issuance and / or Contingent Value Rights (on or after the Effective Date), shall be required to execute a joinder to the New Equity Agreement, as amended from time to time.

## **6.5 Directors and Officers.**

The initial directors and officers shall be designated in the Plan Supplement. The New Board shall consist of 9 members. One of the directors shall be the Chief Executive Officer of TRC. Jennison Associates LLC shall appoint two (2) directors. The remaining six (6) directors shall be appointed by agreement of the 2006 Backstop Parties providing at least 80% of the Equity Put Commitment in respect of the Senior Creditor Rights. The existing board of directors of TRC shall be deemed to have resigned on and as of the Effective Date, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person.

On the Effective Date, the New Board shall cause such individuals as are acceptable to the Required Backstop Parties to be appointed as directors of the Canadian Petitioners and the existing board of directors at each of the Canadian Debtors shall be deemed to have resigned on and as of the Effective Date.

## **6.6 Long-Term Incentive Plan.**

The compensation committee of the New Board shall approve a new long-term incentive plan. Notwithstanding anything to the contrary herein, obligations of the Debtors under the long-term incentive plan (the "LTIP") in effect prior to the commencement of the Chapter 11 Cases shall be paid in full, in cash, in installments over a three-year period as currently set forth in the LTIP as if the LTIP had been assumed, and all LTIP beneficiaries shall waive any claims arising out of or relating to any "change of control", termination, or any other provision that could or would otherwise entitle such director to be paid a greater amount or on a different time frame.

## **6.7 The Rights Offering.**

### **(a) General Description.**

Pursuant to the Rights Offering, TRC will offer and sell, for the Rights Offering Amount, the Rights Offering Equity to the Eligible 2006 Holders and the Eligible 2007 Holders. Each Eligible 2006 Holder shall be offered the right to purchase up to its pro rata share of 75% of the Rights Offering Equity (the "Senior Creditor Rights") and each Eligible 2007 Holder will be offered the right to purchase up to its pro rata share of 25% of the Rights Offering Equity (the "Junior Creditor Rights"). The Rights Offering Equity shall be subject to the New Equity Agreement.

### **(b) Rights Offering Procedures.**

Eligible 2006 Holders and Eligible 2007 Holders will be entitled to exercise the Senior Creditor Rights and Junior Creditor Rights, respectively in order to subscribe for and acquire their pro rata share of the Rights Offering Equity, calculated prior to giving effect to dilution resulting from the Equity Put Fee (to the extent such fee is not waived by any of the Backstop Parties), Management Equity Issuance and the Contingent Value Rights being offered pursuant to the Rights Offering, subject to the Commitment Letter and in accordance with the terms of the Rights Offering Procedures.

### **(c) The Equity Put Commitment.**

In order to facilitate the Rights Offering and implementation of the Plan, the Backstop Parties have agreed to acquire any Unsubscribed Units in accordance with and subject to the terms and conditions of the Commitment Letter and as more fully described in the Disclosure Statement. On the Effective

Date, (i) the Company will reimburse or pay the documented and reasonable fees, costs and expenses of the Backstop Parties, the Backstop Party Professionals and the Prepetition Agents relating to the Equity Put Commitment and the Restructuring Transactions (the "Expense Reimbursement"), and (ii) the Backstop Parties will receive the Equity Put Fee and be entitled to the Backstop Indemnification Obligations.

**(d) Contingent Value Rights.**

On the Effective Date, in consideration for its Equity Put Commitment, each 2007 Backstop Party or its designee that is a holder of 2007 Loan Agreement Claims shall receive its percentage of the Contingent Value Rights as set forth in the Commitment Letter.

**6.8 Issuance of New Equity.**

The issuance of New Equity, including the units of the New Equity reserved for the Management Equity Issuance, is authorized without the need for any further corporate action or without any further action by a Holder of Claims of Interests.

**6.9 Issuance and Distribution of New Equity.**

The New Equity, when issued and distributed as provided in the Plan, will be duly authorized, validly issued, and not subject to any preemptive rights. In addition, the New Equity will be issued as fully paid and non-assessable units. Each distribution and issuance under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance, which terms and conditions shall bind each person or entity receiving such distribution or issuance.

**6.10 Use of Proceeds from Rights Offering; Treatment of Second Lien Credit Agreement Obligations.**

On the Effective Date, the proceeds of the Rights Offering shall be used for general corporate purposes and/or shall, in accordance with the Restructuring Transactions, be loaned or contributed to TEC and used by TEC to pay a portion of the Second Lien Credit Agreement Obligations. The remaining Second Lien Credit Agreement Obligations shall be paid in full from the proceeds of the exit financing being arranged by TEC:

**6.11 Registration Rights Agreement.**

Upon the Effective Date, Reorganized TRC and certain holders of New Equity shall enter into the Registration Rights Agreement, providing such holders with the right to have Reorganized TRC register their units of New Equity with the Securities and Exchange Commission (the SEC) under certain circumstances.

**6.12 Exemptions for Issuance of New Equity.**

Pursuant to section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, the issuance of the 2006 New Equity pursuant to Article 4.4(c) of the Plan will be exempt from registration under the Securities Act and all rules and regulations promulgated thereunder. The New Equity and the Contingent Value Rights issued pursuant to the Rights Offering, the Management Equity Incentive Plan and on account of the Equity Put Fee will be issued and exempt from registration pursuant to section 4(2) of the Securities Act or another exemption from registration under the Securities Act.

### **6.13 Cancellation of Securities and Agreements.**

On the Effective Date, (1) the obligations of the Debtors and non-Debtor Affiliates (which includes their respective obligations under the Guarantees) under the 2006 Credit Agreement, 2007 Loan Agreement, and any other Certificate, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Interest (except such Certificates, notes, or other instruments or documents evidencing indebtedness or obligations of the Debtors, if any, that are specifically and expressly reinstated pursuant to the Plan), shall be cancelled solely as to the Debtors, and the Reorganized Debtors shall not have any continuing obligations thereunder; and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the units, Certificates, notes, bonds, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors (except such agreements, Certificates, notes, or other instruments evidencing indebtedness or obligations of the Debtors, if any, that are specifically and expressly reinstated pursuant to the Plan) shall be released and discharged; provided, however, notwithstanding Confirmation or the occurrence of the Effective Date, any such indenture or agreement that governs the rights of the Holder of a Claim shall continue in effect solely for purposes of allowing (a) Holders of 2006 Credit Agreement Claims, 2007 Loan Agreement Claims or their respective Prepetition Agents to receive distributions under the Plan as provided herein; (b) the Prepetition Agents to make distributions, or to assist in the making of distributions by the Disbursing Agent, under the Plan as provided herein and (c) the Prepetition Agents to seek compensation and/or reimbursement of fees and expenses in accordance with the terms of this Plan. Any reasonable fees and expenses of the Prepetition Agents remaining unpaid on the Effective Date shall be paid in full in cash on the Effective Date, or within ten (10) days after receipt by the Reorganized Debtors of invoices therefor; provided, however, any disputes over the reasonableness of such fees and expenses shall be determined by the Bankruptcy Court. On and after the Effective Date, all duties and responsibilities of the Prepetition Agents shall be discharged unless otherwise specifically set forth in or provided for under this Plan.

### **6.14 Preservation of Causes of Action.**

In accordance with section 1123(b)(3) of the Bankruptcy Code and except as otherwise provided in the Plan, the Debtors (with the consent of the Required Backstop Parties, which consent shall not be unreasonably withheld) and the Reorganized Debtors shall retain and may (but are not required to) enforce all Retained Actions and all other similar claims arising under applicable state laws, including, without limitation, fraudulent transfer claims, if any, and all other Causes of Action of a trustee and debtor-in-possession under the Bankruptcy Code. The Reorganized Debtors, as applicable, in their sole and absolute discretion, shall determine whether to bring, settle, release, compromise, or enforce any such Retained Actions (or decline to do any of the foregoing), and shall not be required to seek further approval of the Bankruptcy Court for such action. The Debtors (with the consent of the Required Backstop Parties, which consent shall not be unreasonably withheld), the Reorganized Debtors, or any successors may pursue such litigation claims in accordance with the best interests of the Reorganized Debtors or any successors holding such rights of action.

### **6.15 Management Equity Incentive Plan.**

The Management Equity Incentive Plan shall be established and adopted by the New Board and shall consist of the Management Equity Issuance. The terms of the Management Equity Incentive Plan shall be set forth in the Plan Supplement and subject to the approval of the New Board.

#### **6.16 Exclusivity Period.**

The Debtors, with the consent of the Required Backstop Parties, (or each of the Backstop Parties, to the extent required in the Term Sheet), shall retain the exclusive right to amend or modify the Plan, and to solicit acceptances of any amendments to or modifications of the Plan, through and until the Effective Date.

#### **6.17 Corporate Action.**

Upon the Effective Date, all actions contemplated by the Plan shall be deemed authorized and approved in all respects, including (i) the Restructuring Transactions; (ii) the adoption of the New Governance Documents for the Reorganized Debtors; (iii) the initial selection of directors and officers for the Reorganized Debtors; (iv) the issuance of the New Equity; (v) the distribution of the New Equity, the Contingent Value Rights, the Senior Creditor Rights, the Junior Creditor Rights and Cash pursuant to the Plan; (vi) the execution and entry into the Exit Financing Agreement; and (vii) all other actions contemplated in the Plan (whether to occur before, on, or after the Effective Date, including, if applicable, the formation of Newco). All matters provided for under the Plan involving the corporate structure of the Debtors and Reorganized Debtors or corporate action to be taken by or required of a Debtor, a Reorganized Debtor or Newco will be deemed to occur and be effective as of the Effective Date, if no such other date is specified in such other documents, and shall be authorized, approved, adopted and, to the extent taken prior to the Effective Date, ratified and confirmed in all respects and for all purposes without any requirement of further action by holders of Claims or Interests, directors of the Debtors or the Reorganized Debtors, as applicable, or any other Person.

#### **6.18 Effectuating Documents; Further Transactions.**

On and after the Effective Date, the Reorganized Debtors and/or Newco and the managers, officers and members of the boards of directors thereof, are authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan or the Restructuring Transactions or to otherwise comply with applicable law, without the need for any approvals, authorization or consents except for those expressly required pursuant to the Plan.

#### **6.19 Exemption from Certain Transfer Taxes and Recording Fees.**

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer from a Debtor to a Reorganized Debtor or any other Person or entity pursuant to the Plan or the Canadian Plan (including, for this purpose, in connection with the Restructuring Transactions), 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, or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

## ARTICLE VII

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### 7.1 General Treatment.

Except as otherwise provided in the Plan, or in any contract, instrument, release, indenture or other agreement or document entered in connection with the Plan, as of the Effective Date, all executory contracts and unexpired leases (if any) to which any of the Debtors are parties are hereby assumed except for an executory contract or unexpired lease that (i) previously has been assumed or rejected prior to the Effective Date, (ii) previously expired or terminated by its own terms, (iii) is specifically designated as a contract or lease to be rejected on the Rejected Executory Contract and Unexpired Lease List, or (iv) is the subject of a separate motion to assume or reject such executory contract or unexpired lease filed by the Debtors under section 365 of the Bankruptcy Code prior to the Confirmation Date. For the avoidance of doubt, the Rejected Executory Contract and Unexpired Lease List must be acceptable to the Required Backstop Parties. The Confirmation Order shall operate as an order authorizing the Debtors' (i) assumption of all assumed executory contracts and unexpired leases and (ii) rejection of the executory contracts or unexpired leases listed on the Rejected Executory Contract and Unexpired Lease List pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

#### 7.2 Cure of Defaults.

Any monetary defaults under each executory contract and unexpired lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the Effective Date, subject to the limitation described below, or on such other terms as the parties to such executory contracts or unexpired leases may otherwise agree. In the event of a dispute regarding (1) the amount of any payments to cure such a default, (2) the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the executory contract or unexpired lease to be assumed, or (3) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption. At least 20 days prior to the Confirmation Hearing, the Debtors shall provide for notices of proposed assumption and proposed cure amounts to be sent to applicable third parties and for procedures for objecting thereto and resolution of disputes by the Bankruptcy Court. Any objection by a counterparty to an executory contract or unexpired lease to a proposed assumption or related cure amount must be filed, served, and actually received by the Debtors at least three days prior to the Confirmation Hearing. **Any counterparty to an executory contract and unexpired lease that fails to object timely to the proposed assumption or cure will be deemed to have assented to such matters, and any subsequent or additional requests for cure, other payments or assurances of future performance shall be disallowed, automatically and forever barred from assertion and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or further notice to or action, order, or approval of the Bankruptcy Court, and any Claim for cure shall be deemed fully satisfied, released and discharged, notwithstanding anything included in the Schedules or in any proof of claim to the contrary.**

Assumption of any executory contract or unexpired lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed executory contract or unexpired lease at any time prior to the effective date of assumption. Any Proofs of Claim filed with respect to an executory

contract or unexpired lease that has been assumed shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

**The Debtors or Reorganized Debtors, as applicable, reserve the right, either to reject or nullify, the assumption of any executory contract or unexpired lease no later than thirty (30) days after entry of any Final Order determining the cure or any request for adequate assurance of future performance required to assume such executory contract or unexpired lease.**

### **7.3 Rejection Claims.**

In the event that the rejection of an executory contract or unexpired lease by any of the Debtors pursuant to the Plan results in damages to the other party or parties to such contract or lease, a Claim for such damages, if not heretofore evidenced by a timely filed proof of claim, shall be forever barred and shall not be enforceable against the Debtors or the Reorganized Debtors, or their respective properties or interests in property as agents, successors, or assigns, unless a proof of claim is filed with the Bankruptcy Court and served on counsel for the Debtors and the Reorganized Debtors on or before the date that is thirty (30) days after the Confirmation Date or such later rejection date that occurs as a result of a dispute concerning amounts necessary to cure any defaults. Rejection Claims will be treated as General Unsecured Claims under the Plan.

### **7.4 Mineral Leases.**

To the extent any of the Reorganized Debtors' Mineral Leases constitute executory contracts or unexpired leases of real property under section 365 of the Bankruptcy Code, such Mineral Leases will be assumed by the Reorganized Debtors. To the extent any of the Reorganized Debtors' Mineral Leases constitute contracts or other property rights not assumable under section 365 of the Bankruptcy Code, except as provided in the Plan or Confirmation Order, such Mineral Leases shall pass through the Chapter 11 Cases for the benefit of the Reorganized Debtors and the counterparties to such Mineral Leases.

If there is a dispute as to any cure obligation (including cure payments) between the applicable Reorganized Debtor and the lessor of a Mineral Lease, the applicable Reorganized Debtor shall only have to pay or perform the non-disputed cure obligation with the balance of the cure payment or cure performance to be made or performed after resolution of such dispute either by (i) agreement of the parties or (ii) resolution by the Bankruptcy Court under a Final Order.

### **7.5 Survival of Indemnification Provisions.**

The Indemnification Provisions and the Backstop Indemnification Obligations shall not be discharged or impaired by confirmation of the Plan and such obligations shall be deemed and treated as executory contracts assumed by the Debtors hereunder and shall continue as obligations of the Reorganized Debtors. Any Indemnification Provisions not identified in the Data Room 20 calendar days prior to the Confirmation Date shall be deemed rejected. Notwithstanding the foregoing, any indemnification obligations in favor of any entity or person who is not a director or officer shall be deemed rejected.

### **7.6 Survival of Other Employment Arrangements.**

On and after the Effective Date, and except as otherwise provided in the Plan, the Reorganized Debtors may but shall not be required to: (1) honor, in the ordinary course of business, any contracts, agreements, policies, programs, and plans, in each case to the extent disclosed in the Disclosure

Statement or the first day pleadings, for, among other things, compensation, health care benefits, disability benefits, deferred compensation benefits, travel benefits, savings, severance benefits, retirement benefits, welfare benefits, workers' compensation insurance, and accidental death and dismemberment insurance for the managers, officers, and employees of any of the Debtors who served in such capacity at any time and (2) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising prior to the Commencement Date; provided, however, that the Debtors' or the Reorganized Debtors' performance of any employment agreement will not entitle any person to any benefit or alleged entitlement under any policy, program, or plan that has expired or been terminated before the Effective Date, or restore, reinstate, or revive any such benefit or alleged entitlement under any such policy, program, or plan; provided further, however, that the Debtors, with the consent of the Required Backstop Parties, will designate as part of the Plan Supplement those employment agreements with other members of existing senior management and/or other employees that shall be assumed as of the Effective Date, which list shall include the existing employment agreements with its Chief Executive Officer and Chief Financial Officer, respectively, and to the extent such agreements are not so designated, they will be deemed rejected as of the Effective Date.

Nothing in the Plan shall limit, diminish, or otherwise alter the Reorganized Debtors' defenses, claims, causes of action, or other rights with respect to any such contracts, agreements, policies, programs, and plans. Notwithstanding the foregoing, pursuant to section 1129(a)(13) of the Bankruptcy Code, on and after the Effective Date, all retiree benefits (as that term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law.

#### **7.7 Insurance Policies.**

All insurance policies identified in the Data Room as of 20 calendar days prior to the Confirmation Hearing pursuant to which the Debtors have any obligations in effect as of the date of the Confirmation Order shall be deemed and treated as executory contracts pursuant to the Plan and shall be assumed by the respective Debtors and Reorganized Debtors and shall continue in full force and effect. All insurance policies not identified in the Data Room as of 20 calendar days prior to the Confirmation Hearing pursuant to which the Debtors have any obligations in effect as of the date of the Confirmation Order shall be deemed rejected. Notwithstanding anything herein, the Tail Coverage shall be deemed and treated as executory contracts pursuant to the Plan and shall be assumed by the respective Debtors and Reorganized Debtors and shall continue in full force and effect.

TRC has obtained, or, will obtain consistent with the terms of the Term Sheet, reasonably sufficient Tail Coverage under a directors and officers' liability insurance policy for the current and former directors and officers of the Debtors. Notwithstanding anything to the contrary contained herein, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnification obligations assumed by the foregoing assumption of any director and officer liability insurance policies, and each such indemnity obligation, but only to the extent such obligation is contained in the Indemnification Provisions and/or the insurance policies identified in the Data Room 20 calendar days prior to the Confirmation Hearing, shall be deemed and treated as an executory contract that has been assumed by the Debtors under the Plan as to which no proof of claim need be filed.

#### **7.8 Nonoccurrence of Effective Date.**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any consensual request to extend the deadline for assuming or rejecting unexpired leases pursuant to section 365(d)(4) of the Bankruptcy Code.



## ARTICLE VIII

### PROVISIONS GOVERNING DISTRIBUTIONS

#### 8.1 Record Date for Distributions.

As of the Confirmation Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtors or their respective agents shall be deemed closed, and there shall be no further changes made to reflect any new record holders of any Claims or Interests occurring on or after the Distribution Record Date.

#### 8.2 Timing and Calculation of Amounts to Be Distributed.

Except as otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such a Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim against the Debtors shall receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class and in the manner provided herein. 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. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in ARTICLE IX hereof. Except as otherwise provided herein, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for herein, regardless of whether such distributions are delivered on or at any time after the Effective Date.

#### 8.3 Disbursing Agent.

Except as otherwise provided herein, all distributions under the Plan shall be made by the Reorganized Debtors as Disbursing Agent or such other Entity designated by the Reorganized Debtors to assist the Disbursing Agent on the Effective Date. A Disbursing Agent 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. In the event that a Disbursing Agent is so ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Reorganized Debtors.

#### 8.4 Rights and Powers of Disbursing Agent.

##### (a) Powers of the Disbursing Agent.

The Reorganized Debtors as Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

##### (b) Expenses Incurred on or After the Effective Date.

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Disbursing Agent, or such other Entity designated by the Reorganized Debtors to assist the Disbursing Agent, on or after the Effective Date (including taxes) and any reasonable

compensation and expense reimbursement claims (including reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash by the Reorganized Debtors.

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

**(a) Payments and Distributions on Disputed Claims.**

Notwithstanding any other provision of the Plan, no distributions shall be made under the Plan on account of any Disputed Claim, unless and until such Claim becomes an Allowed Claim. Distributions made after the Effective Date to Holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall be deemed to have been made on the Effective Date.

**(b) Special Rules for Distributions to Holders of Disputed Claims.**

Notwithstanding any provision otherwise in the Plan and except as may be agreed to by the Debtors (with the consent of the Required Backstop Parties, which consent shall not be unreasonably withheld) or the Reorganized Debtors, on the one hand, and the Holder of a Disputed Claim, on the other hand, no partial payments and no partial distributions shall be made with respect to any Disputed Claim until all Disputed Claims held by the Holder of such Disputed Claim have become Allowed Claims or have otherwise been resolved by settlement or Final Order.

**8.6 Delivery of Distributions and Undeliverable or Unclaimed Distributions.**

**(a) Delivery of Distributions in General.**

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be made to Holders of record as of the Distribution Record Date by the Reorganized Debtors or the applicable Disbursing Agent, as appropriate: (a) to the signatory set forth on any of the Proofs of Claim filed by such Holder or other representative identified therein (or at the last known addresses of such Holder if no proof of claim is filed or if the Debtors have been notified in writing of a change of address); (b) at the addresses set forth in any written notices of address changes delivered to the Reorganized Debtors or the applicable Disbursing Agent, as appropriate, after the date of any related proof of claim; (c) at the addresses reflected in the Schedules if no proof of claim has been filed and the Reorganized Debtors or the applicable Disbursing Agent, as appropriate, has not received a written notice of a change of address; or (d) on any counsel that has appeared in the Chapter 11 Cases on the Holder's behalf. Distributions under the Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan. The Debtors, the Reorganized Debtors, the Backstop Parties, the Prepetition Agents and the applicable Disbursing Agent, as applicable, shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct.

Except as otherwise provided in the Plan, all distributions to Holders of 2006 Credit Agreement Claims and 2007 Loan Agreement Claims shall be governed by the 2006 Credit Agreement and the 2007 Loan Agreement, respectively, and shall be deemed completed when made to the Prepetition Agents, who shall in turn make distributions in accordance with the 2006 and 2007 Loan Agreements, for further distribution to the Holders of 2006 Credit Agreement Claims and 2007 Loan Agreement Claims, but subject to the charging liens of the Prepetition Agents.

**(b) Fractional Securities.**

Payments of fractions of units of New Equity shall not be made. Fractional units of New Equity that would otherwise be distributed under the Plan shall be rounded to the nearest whole number, with any fractional units of .50 or less being rounded down.

**(c) Undeliverable Distributions and Unclaimed Property.**

If any distribution to a holder of a Claim is returned as undeliverable, no further distributions to such holder of such Claim shall be made unless and until the Disbursing Agent is notified of the then-current address of such holder of the Claim, at which time all missed distributions shall be made to such holder of the Claim without interest. Amounts in respect of undeliverable distributions shall be returned to the Reorganized Debtors until such distributions are claimed. The Reorganized Debtors shall make reasonable efforts to locate holders of undeliverable distributions. Such undeliverable distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and forfeited at the expiration of six months from the Effective Date. After such date, all "unclaimed property" or interests in property shall revert to the Reorganized Debtors (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any Holder to such property or Interest in property shall be discharged and forever barred.

**8.7 Withholding and Reporting Requirements.**

In connection with the Plan and all instruments issued in connection therewith, the Disbursing Agent shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements.

**8.8 Setoffs.**

Without altering or limiting any of the rights and remedies of the Debtors and the Reorganized Debtors under section 502(d) of the Bankruptcy Code, all of which rights and remedies are hereby reserved, the Debtors and the Reorganized Debtors may withhold (but not set off except as set forth below) from the distributions called for under the Plan on account of any Allowed Claim an amount equal to any claims, equity interests, rights, and Causes of Action of any nature that the Debtors or the Reorganized Debtors may hold against the Holder of any such Allowed Claim. In the event that any such claims, equity interests, rights, and Causes of Action of any nature that the Debtors or the Reorganized Debtors may hold against the Holder of any such Allowed Claim are adjudicated by Final Order or otherwise resolved, the Debtors may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant hereto on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim) the amount of any adjudicated or resolved claims, equity interests, rights, and Causes of Action of any nature that the Debtors or the Reorganized Debtors may hold against the Holder of any such Allowed Claim, but only to the extent of such adjudicated or resolved amount. Neither the failure to effect such a setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors or the Reorganized Debtors of any such claims, equity interests, rights, and Causes of Action that the Debtors or the Reorganized Debtors may possess against any such Holder, except as specifically provided herein.

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

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

The Debtors or the Reorganized Debtors, as applicable, shall reduce in full a Claim, and such Claim shall be disallowed without a Claim objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or Reorganized Debtor. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Reorganized Debtor on account of such Claim, such Holder shall, within two weeks of receipt thereof, repay or return the distribution to the applicable Reorganized Debtor, 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 distribution under the Plan.

**(b) Claims Payable by Third Parties.**

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, such Claim may be expunged without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

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

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, 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.

**8.10 No Interest on Disputed Claims.**

Unless otherwise specifically provided for in the Plan or as otherwise required by sections 506(b), 511 or 1129(a)(9)(C)-(D) of the Bankruptcy Code, interest shall not accrue or be paid on any Disputed Claim in respect of the period from the Effective Date to the date a final distribution is made when and if such Disputed Claim becomes an Allowed Claim.

**8.11 Postpetition Interest on Claims.**

Except as expressly provided in the Plan, the Confirmation Order or any contract, instrument, release, settlement or other agreement entered into in connection with the Plan, or as required by applicable bankruptcy law, including sections 511 and 1129(a)(9)(C)-(D) of the Bankruptcy Code, postpetition interest shall not be treated as accruing on account of any Claim for purposes of determining the allowance of, and distribution on account of, such Claim.

## **8.12 Allocation of Plan Distributions Between Principal and Interest.**

To the extent that any Allowed Claim to which a distribution under this Plan relates is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated for all purposes (including for United States and Canadian federal income tax purposes) to the principal amount of the Claim (including the secured and unsecured portion of the principal amount of such Claim) first and then, to the extent that the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest (including interest in respect of any secured portion of such Claim). For the avoidance of doubt, this Article 8.12 shall not apply to any claims that are not indebtedness, including, without limitation, any Priority Tax Claims or Administrative Claims pursuant to section 503(b)(1)(B) and (C) of the Bankruptcy Code.

## **ARTICLE IX**

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

#### **9.1 Objections to Claims.**

The Debtors or the Reorganized Debtors shall be entitled to object to Claims. Any objections to Claims shall be served and filed on or before the later of (i) one hundred twenty (120) days after the Effective Date or (ii) such date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (i) above. Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the holder of the Claim if the Debtors or Reorganized Debtors effect service in any of the following manners: (i) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (ii) to the extent counsel for a holder of a Claim is unknown, by first class mail, postage prepaid, on the signatory on the proof of claim or other representative identified on the proof of claim or any attachment thereto (or at the last known addresses of such holders of Claims if no proof of claim is filed or if the Debtors have been notified in writing of a change of address); or (iii) by first class mail, postage prepaid, on any counsel that has appeared on behalf of the holder of the Claim in the Chapter 11 Cases and has not withdrawn such appearance.

#### **9.2 No Distributions Pending Allowance.**

Notwithstanding any other provision hereof, if any portion of a Claim is a Disputed Claim, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

#### **9.3 Estimation of Claims.**

The Debtors or the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code or other applicable law regardless of whether the Debtors 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, unliquidated, 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 Reorganized Debtors 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.

#### **9.4 Distributions Relating to Disputed Claims.**

At such time as a Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall distribute to the holder of such Claim, such holder's pro rata portion of the property distributable with respect to the Class in which such Claim belongs. To the extent that all or a portion of a Disputed Claim is disallowed, the holder of such Claim shall not receive any distribution on account of the portion of such Claim that is disallowed and any property withheld pending the resolution of such Claim shall be reallocated pro rata to the holders of Allowed Claims in the same class.

#### **9.5 Disallowed Claims.**

All Claims held by Persons or entities against whom or which any Debtor or Reorganized Debtor has commenced a proceeding asserting a cause of action under sections 542, 543, 544, 545, 547, 548, 549, and/or 550 of the Bankruptcy Code shall be deemed Disallowed Claims pursuant to section 502(d) of the Bankruptcy Code and holders of such Claims shall not be entitled to vote to accept or reject the Plan. Claims that are deemed disallowed pursuant to this section shall continue to be disallowed for all purposes until the avoidance action against such party has been settled or resolved by Final Order and any sums due to the Debtors or the Reorganized Debtors from such party have been paid.

**EXCEPT AS OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE APPLICABLE CLAIMS BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM IS DEEMED TIMELY FILED BY A BANKRUPTCY COURT ORDER ON OR BEFORE THE LATER OF (1) THE CONFIRMATION HEARING AND (2) 45 DAYS AFTER THE APPLICABLE CLAIMS BAR DATE.**

### **ARTICLE X**

#### **ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS**

##### **10.1 Professional Claims.**

Professionals or other entities asserting a Professional Claim for services rendered before the Confirmation Date must file and serve on the Reorganized Debtors and such other entities who are designated by the Bankruptcy Rules, the Confirmation Order, or other order of the Bankruptcy Court an application for final allowance of such Professional Claim no later than the Professional Fees Bar Date; provided that, the Reorganized Debtors shall pay Professionals in the ordinary course of business for any work performed after the Confirmation Date, including those fees and expenses incurred by Professionals in connection with the implementation and consummation of this Plan, in each case without further application or notice to or order of the Bankruptcy Court; provided further, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Confirmation Date, without further Bankruptcy Court order, pursuant to the Ordinary Course

Professionals Order. Objections to any Professional Claim must be filed and served on the Reorganized Debtors and the requesting party by the later of (a) 50 days after the Effective Date and (b) 20 days after the filing of the applicable request for payment of the Professional Claim. Each Holder of an Allowed Professional Claim shall be paid by the Reorganized Debtors in Cash within five Business Days of entry of the order approving such allowed Professional Claim.

#### **10.2 Post-Confirmation Date Retention.**

Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors shall employ and pay professionals in the ordinary course of business. For the avoidance of doubt, after the Confirmation Date, Professionals will no longer be required to file fee applications and the Professional Fee Order will no longer be in effect; provided, however, for any fees and expenses incurred prior to the Confirmation Date, Professionals will be required to file a fee application and comply with the Professional Fee Order in all respects.

#### **10.3 Bar Date for Other Administrative Claims.**

Except as otherwise provided herein, unless otherwise previously filed, requests for payment of Administrative Claims (other than claims in respect of the Equity Put Fee, the Expense Reimbursement, the Backstop Indemnification Obligations or any other fee or expense payable by the Debtors or the Reorganized Debtors under the Commitment Letter) must be filed and served on the Reorganized Debtors by no later than the Administrative Claims Bar Date. Holders of such Administrative Claims that are required to file and serve a request for payment of such Administrative Claims that do not file and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtors, the Reorganized Debtors or their Estates and such Administrative Claims shall be deemed discharged as of the Effective Date. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article 11.7 hereof. Objections to such requests must be filed and served on the Reorganized Debtors and the requesting party by the later of (a) sixty (60) days after the Effective Date and (b) thirty (30) days after the filing of the applicable request for payment of Administrative Claims, if applicable, as the same may be modified or extended from time to time by the Bankruptcy Court and/or on motion of a party in interest approved by the Bankruptcy Court.

### **ARTICLE XI**

#### **EFFECT OF PLAN CONFIRMATION**

##### **11.1 Revesting of Assets.**

Except as otherwise explicitly provided in the Plan or pursuant to the Restructuring Transactions, on the Effective Date, all property comprising the Estates, subject to the Restructuring Transactions, shall revest in each of the Reorganized Debtors which owned such property or interest in property as of the Effective Date, free and clear of all Claims, liens, charges, encumbrances, rights, and interests of creditors and equity security holders. As of and following the Effective Date, the Reorganized Debtors may operate their businesses and use, acquire, and dispose of property and settle and compromise Claims or Interests without supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and the Confirmation Order.

## **11.2 Discharge of the Debtors.**

Pursuant to section 1141(d) of the Bankruptcy Code, except as otherwise specifically provided in the Plan or in the Confirmation Order, the distributions and rights that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims and Causes of Action (whether known or unknown) against, liabilities of, liens on, obligations of, rights against, and Interests in the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims, rights, and Interests, including, but not limited to, Claims and Interests that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims relate to services performed by employees of the Debtors prior to the Petition Date and that arise from a termination of employment or a termination of any employee or retiree benefit program which occurred prior to the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not (a) a proof of claim or interest based upon such Claim, debt, right, or Interest is filed or deemed filed under section 501 of the Bankruptcy Code, (b) a Claim or Interest based upon such Claim, debt, right, or Interest is allowed under section 502 of the Bankruptcy Code, or (c) the holder of such a Claim, right, or Interest accepted the Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims against and Interests in the Debtors, subject to the occurrence of the Effective Date.

## **11.3 Compromises and Settlements.**

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a holder of a Claim may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against them and Causes of Action against other entities.

## **11.4 Release by the Debtors of Certain Parties.**

Pursuant to section 1123(b)(3) of the Bankruptcy Code, effective as of the Effective Date, each Debtor, in its individual capacity and as a debtor in possession for and on behalf of its Estate, shall release and discharge and be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged all Released Parties for and from any and all claims or Causes of Action existing as of the Effective Date in any manner arising from, based on, or relating to, in whole or in part, the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan or the Canadian 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 or the Canadian Proceedings, or any act, omission, occurrence, or event in any manner related to any such Claims, Interests, restructuring, or the Chapter 11 Cases or the Canadian Proceedings, including, but not limited to, any claim relating to, or arising out of the Chapter 11 Cases or the Canadian Proceedings, the negotiation and filing of the Plan or the Canadian Plan, the filing of the Chapter 11 Cases or the Canadian Proceedings, the formulation, preparation, negotiation, dissemination, filing, implementation,



administration, confirmation, or consummation of the Plan or the Canadian Plan, the Disclosure Statement, any document filed by the Debtors in respect of the Canadian Plan, Exhibits, any document filed by the Debtors in respect of the Canadian Plan, the Plan Supplement, any employee benefit plan, instrument, release, or other agreement or document created, modified, amended or entered into in connection with the Plan or the Canadian Plan. The Reorganized Debtors and any newly-formed entities that will be continuing the Debtors' businesses after the Effective Date shall be bound, to the same extent the Debtors are bound, by the releases and discharges set forth above.

#### 11.5 Release by the Holders of Claims and Interests.

On the Effective Date, each Person who votes to accept the Plan in its capacity as the holder of any Claim or Interest and each entity (other than a Debtor), which has held, holds, or may hold a Claim against or Interest in the Debtors in its capacity as the holder of any Claim or Interest, in consideration for the obligations of the Debtors and the Reorganized Debtors under the Plan and Cash, New Equity, and other contracts, instruments, releases, agreements, or documents to be delivered in connection with the Plan or the Canadian Plan (each, a "Release Obligor"), shall have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged the Reorganized Debtors, the Debtors and all Released Parties for and from any claim or Cause of Action existing as of the Effective Date in any manner arising from, based on, or relating to, in whole or in part, any or all of the Debtors, the subject matter of, or the transaction or event giving rise to, the claim of such Release Obligor, the business or contractual arrangements between or among any Debtor and Release Obligor or any Released Party, the restructuring of the claim prior to or in the Chapter 11 Cases or the Canadian Proceedings, or any act, omission, occurrence, or event in any manner related to such subject matter, transaction, obligation, restructuring or the Chapter 11 Cases or the Canadian Proceedings, including, but not limited to, any claim relating to, or arising out of the Debtors' Chapter 11 Cases or the Canadian Proceedings, the negotiation and filing of the Plan or the Canadian Plan, the filing of the Chapter 11 Cases or the Canadian Proceedings, the formulation, preparation, negotiation, dissemination, filing, implementation, administration, confirmation, or consummation of the Plan or the Canadian Plan, the Disclosure Statement, any document filed by the Debtors in respect of the Canadian Plan, the Exhibits, the Plan Supplement, any employee benefit plan, instrument, release, or other agreement or document created, modified, amended or entered into in connection with the Plan or the Canadian Plan.

#### 11.6 Exculpation.

Except as otherwise specifically provided in the Plan, the Plan Supplement or related documents, the Debtors, the Reorganized Debtors and the Released Parties shall neither have, nor incur any liability to any entity for any prepetition or postpetition act taken or omitted to be taken in connection with, or related to, or arising out of the Chapter 11 Cases, the negotiation and filing of the Plan, the filing of the Chapter 11 Cases, the formulation, preparation, negotiation, dissemination, filing, implementation, administration, confirmation or consummation of the Plan, the Disclosure Statement, the Exhibits, the Plan Supplement documents, any employee benefit plan, instrument, release or other agreement or document created, modified, amended or entered into in connection with the Plan, except for their willful misconduct or gross negligence and except with respect to obligations arising under confidentiality agreements, joint interest agreements, and protective orders, if any, entered during the Chapter 11 Cases; provided, however, each Released Party shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities pursuant to, or in connection with, the above referenced documents, actions, or inactions.

**11.7 Injunction.**

The satisfaction, release, and discharge pursuant to this ARTICLE XI shall act as an injunction against any Person commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim, Interest, or Cause of Action satisfied, released, or discharged under the Plan to the fullest extent authorized or provided by the Bankruptcy Code, including, without limitation, to the extent provided for or authorized by sections 524 and 1141 thereof.

**ARTICLE XII**

**CONFIRMATION OF THE PLAN**

**12.1 Conditions to Confirmation.**

It shall be a condition to confirmation of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article 12.3 hereof:

(a) The Bankruptcy Court shall have entered an order by May 14, 2010 in form and substance satisfactory to the Required Backstop Parties, approving the Disclosure Statement with respect to this Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.

(b) The Plan, the Plan Supplement and all of the schedules, documents, and exhibits contained therein (including, but not limited to, the Exit Financing) shall have been filed in form and substance acceptable to the Required Backstop Parties, without prejudice to the Reorganized Debtors' rights under the Plan to alter, amend, or modify certain of the schedules, documents, and exhibits contained in the Plan Supplement consistent with Article 14.5 of this Plan.

(c) The proposed Confirmation Order shall be in form and substance acceptable to the Required Backstop Parties.

(d) The Confirmation Order shall:

(i) authorize the Debtors and the Reorganized Debtors to take all actions necessary or appropriate to enter into, implement and consummate any contracts and other agreements or documents created in connection with the Plan;

(ii) decree that the provisions of the Confirmation Order, the Plan and the Plan Supplement are nonseverable and mutually dependent;

(iii) authorize the Reorganized Debtors to issue the New Equity pursuant to the exemption from registration under the Securities Act provided by Section 1145 of the Bankruptcy Code or some other exemption from such registration;

(iv) decree that the Confirmation Order shall supersede any Bankruptcy Court orders issued prior to the Confirmation Date that may be inconsistent with the Confirmation Orders; and

(v) authorize the implementation of the Plan in accordance with its terms.