

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

In re:	)	
	)	Chapter 11
BLACKHAWK MINING LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11595 (LSS)
	)	
Debtors.	)	(Jointly Administered)
	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
APPROVING THE DEBTORS’ DISCLOSURE STATEMENT FOR, AND  
CONFIRMING, THE DEBTORS’ MODIFIED JOINT PREPACKAGED PLAN OF  
REORGANIZATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

---

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) having:

- a. distributed, on or about July 15, 2019, (i) the *Debtors’ Joint Prepackaged Chapter 11 Plan of Reorganization* [Docket No. 16] (as modified, supplemented, or otherwise amended from time to time, the “Plan”),<sup>2</sup> (ii) the *Disclosure Statement for the Debtors’ Joint Prepackaged Chapter 11 Plan of Reorganization* [Docket No. 17] (including all exhibits thereto, the “Disclosure Statement”), and (iii) ballots for voting on the Plan (each, a “Ballot”) to Holders of Claims or Interests entitled to vote on the Plan—Holders in Classes 3, 4, 10A, 10B, and 10C—in accordance with the terms of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”);

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number include: Blackhawk Mining LLC (5600); Blackhawk Coal Sales, LLC (9456); Blackhawk Land and Resources, LLC (7839); Blackhawk River Logistics, LLC (3388); Blue Creek Mining, LLC (2427); Blue Diamond Mining, LLC (3488); Eagle Shield, LLC (6721); FCDC Coal, Inc. (6188); Guyandotte Mining, LLC (4882); Hampden Coal, LLC (8241); Kanawha Eagle Mining, LLC (0586); Logan & Kanawha, LLC (3178); Panther Creek Mining, LLC (0627); Pine Branch Land, LLC (9661); Pine Branch Mining, LLC (9681); Pine Branch Resources, LLC (9758); Redhawk Mining, LLC (0852); Rockwell Mining, LLC (3874); Spruce Pine Land Company (2254); Spurlock Mining, LLC (2899); Triad Mining, LLC (7713); and Triad Trucking, LLC (6112). The location of the Debtors’ service address in these chapter 11 cases is 3228 Summit Square Place, Suite 180, Lexington, Kentucky 40509.

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

- b. commenced, on July 19, 2019 (the “Petition Date”), these chapter 11 cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”);
- c. filed, on the Petition Date, the Plan and the Disclosure Statement;
- d. filed, on the Petition Date, the *Debtors’ Motion for Entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Approving the Solicitation Procedures and Dates, Deadlines, and Notices Related Thereto, (III) Directing that a Meeting of Creditors Not Be Convened, (IV) Waiving the Requirement of Filing Statements of Financial Affairs and Schedules of Assets and Liabilities, and (V) Granting Related Relief* [Docket No. 15] (the “Scheduling Motion”);
- e. filed, on the August 2, 2019, the *Declaration of James Daloia of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Debtors’ Joint Prepackaged Chapter 11 Plan of Reorganization* [Docket No. 124] (the “Voting Report”), which detailed the results of the Plan voting process;
- f. filed, on July 23, 2019, the *Notice of (I) Commencement of Prepackaged Chapter 11 Bankruptcy Cases, (II) Combined Hearing on the Adequacy of the Disclosure Statement, Confirmation of the Joint Prepackaged Chapter 11 Plan, and Related Matters, and (III) Related Objection and Briefing Deadlines* [Docket No. 83] (the “Confirmation Hearing Notice”), which contained notice of the commencement of the Chapter 11 Cases, the date and time set for the hearing to consider approval of the Disclosure Statement and Confirmation of the Plan (the “Confirmation Hearing”), and the deadline for filing objections to the Plan and the Disclosure Statement;
- g. published, on July 25, 2019, in *The New York Times*, the *Charleston Gazette-Mail*, and the *Lexington Herald Leader*, as evidenced by the *Affidavits of Publication* [Docket Nos. 114, 115, 116] (together with the Confirmation Hearing Notice Affidavit (as defined herein), the “Affidavits”), the Confirmation Hearing Notice, consistent with the order granting the Scheduling Motion [Docket No. 75] (the “Scheduling Order”);
- h. filed, on July 26, 2019, the *Affidavit of Service* of the Confirmation Hearing Notice [Docket No. 110] (the “Confirmation Hearing Notice Affidavit”);
- i. filed, on August 13, 2019, the *Plan Supplement for the Debtors’ Joint Prepackaged Chapter 11 Plan of Reorganization* [Docket No. 196], which included: (a) the New Organizational Documents and Shareholders Agreement; (b) the New First Lien Loan Agreement; (c) the Exit ABL Facility Agreement; (d) the Restructuring Steps Memorandum; (e) the Members of the Reorganized Blackhawk Board; (f) the Rejected Executory Contract and Unexpired Lease List; (g) the Assumed Executory Contract and Unexpired Lease List; and

- (h) the Schedule of Retained Causes of Action (as defined herein) (as modified, supplemented, or otherwise amended from time to time, the “Plan Supplement”);
- j. filed, on August 26, 2019, (i) the *Debtors’ Memorandum of Law in Support of an Order Approving the Debtors’ Disclosure Statement for, and Confirming, the Debtors’ Joint Prepackaged Chapter 11 Plan of Reorganization* [Docket No. 233] (the “Confirmation Brief”) and (ii) the *Declaration of Kevin Nystrom in Support of Confirmation of the Debtors’ Joint Prepackaged Chapter 11 Plan Plan of Reorganization* [Docket No. 234] (the “Nystrom Declaration”); and
- k. filed, on August 26, 2019, the *Debtors’ Modified Joint Prepackaged Chapter 11 Plan of Reorganization* [Docket No. 231].

The Court having:

- a. entered, on July 22, 2019, the Scheduling Order;
- b. set August 28, 2019, at 10:00 a.m., prevailing Eastern Time, as the date and time for the Confirmation Hearing, pursuant to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128, and 1129 of the Bankruptcy Code, as set forth in the Scheduling Order;
- c. reviewed the Plan, the Disclosure Statement, the Confirmation Brief, the Nystrom Declaration, the Voting Report, the Confirmation Hearing Notice, the Affidavits, the Ballots, and all filed pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and Confirmation of the Plan, including all objections, statements, and reservations of rights;
- d. held the Confirmation Hearing on August 28, 2019, at 10:00 a.m., prevailing Eastern Time;
- e. heard the statements and arguments made by counsel in respect of approval of the Disclosure Statement and Confirmation of the Plan and the objections thereto; and
- f. considered all oral representations, affidavits, testimony, documents, filings, and other evidence regarding approval of the Disclosure Statement and Confirmation of the Plan and the objections thereto.

NOW, THEREFORE, it appearing to the Court that notice of the Confirmation Hearing and the opportunity for any party in interest to object to approval of the Disclosure Statement and Confirmation of the Plan have been adequate and appropriate, and the legal and factual bases set forth in the documents filed in support of approval of the Disclosure Statement and Confirmation of the Plan and other evidence presented at the Confirmation Hearing establish just cause for the

relief granted herein; and after due deliberation thereon and good cause appearing therefor, the Court makes and issues the following findings of fact and conclusions of law, and orders:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

IT IS DETERMINED, FOUND, ADJUDGED, DECREED, AND ORDERED THAT:

**A. Findings and Conclusions.**

1. The findings and conclusions set forth herein and in the record of the Confirmation Hearing constitute the Court's findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following conclusions of law constitute findings of fact, or vice versa, they are adopted as such.

**B. Jurisdiction, Venue, and Core Proceeding.**

2. The Court has jurisdiction over the Chapter 11 Cases pursuant to sections 157 and 1334 of title 28 of the United States Code, 28 U.S.C. §§ 1-4881 (the "Judicial Code"), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Court has exclusive jurisdiction to determine whether the Disclosure Statement and the Plan comply with the applicable provisions of the Bankruptcy Code and should be approved and confirmed, respectively. Venue is proper in this district pursuant to sections 1408 and 1409 of the Judicial Code. Approval of the Disclosure Statement and Confirmation of the Plan are core proceedings within the meaning of section 157(b)(2) of the Judicial Code.

**C. Eligibility for Relief.**

3. The Debtors were and are entities eligible for relief under section 109 of the Bankruptcy Code.

**D. Commencement and Joint Administration of the Chapter 11 Cases.**

4. On the Petition Date, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. In accordance with the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 54], the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. Since the Petition Date, the Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases. No official committees have been appointed in the Chapter 11 Cases.

**E. Objections.**

5. Any resolution of objections to Confirmation explained on the record at the Confirmation Hearing is hereby incorporated by reference. All unresolved objections, statements, informal objections, and reservations of rights (except with respect to unresolved cure amounts), if any, related to the Disclosure Statement or Confirmation of the Plan are overruled on the merits.

**F. Burden of Proof—Confirmation of the Plan.**

6. The Debtors, as proponents of the Plan, have met their burden of proving the applicable elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for Confirmation of the Plan.

**G. Notice; Joinder/Intervention.**

7. As evidenced by the Affidavits, due, adequate, and sufficient notice of the Disclosure Statement, the Plan, and the Confirmation Hearing, together with all deadlines for voting to accept or reject the Plan as well as objecting to the Disclosure Statement and the Plan, has been provided to: (a) known Holders of Claims and Interests; (b) the office of the U.S.

Trustee for the District of Delaware; (c) the administrative agent under the Debtors' prepetition asset-based revolving credit facility; (d) the administrative agent under the Debtors' prepetition first lien term loan facility; (e) the administrative agent under the Debtors' prepetition second lien term loan facility; (f) counsel to the Crossover Group; (g) counsel to the First Lien Group; (h) the administrative agent under the Debtors' debtor in possession term loan financing facility; (i) the administrative agent under the Debtors' debtor in possession asset-based revolving financing facility; (j) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors operate; (k) the office of the attorneys general for the states in which the Debtors operate; (l) the United States Attorney's Office for the District of Delaware; (m) the Internal Revenue Service; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002 (the parties identified in clauses (a) through (n), collectively, the "Notice Parties"). Also, the Confirmation Hearing Notice was published in *The New York Times*, the *Charleston Gazette-Mail*, and in the *Lexington Herald Leader* on July 25, 2019, in compliance with the Scheduling Order and Bankruptcy Rule 2002(l). Such notice was adequate and sufficient pursuant to section 1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3017, and 3020, and other applicable law and rules, and no other or further notice is or shall be required.

#### **H. Disclosure Statement.**

8. The Disclosure Statement contains (a) sufficient information of a kind necessary to satisfy the disclosure requirements of all applicable nonbankruptcy laws, rules, and regulations, including the Securities Act, and (b) "adequate information" (as such term is defined in section 1125(a) and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, and the transactions contemplated therein. The filing of the Disclosure Statement with the clerk of the Court satisfied Bankruptcy Rule 3016(b).

**I. Voting Report.**

9. Only Holders of Claims or Interests in Classes 3, 4, 10A, 10B, and 10C were eligible to vote on the Plan (the “Voting Classes”). The Ballots the Debtors used to solicit votes to accept or reject the Plan from Holders in the Voting Classes adequately addressed the particular needs of the Chapter 11 Cases and were appropriate for Holders in the Voting Classes to vote to accept or reject the Plan. Holders of Claims or Interests in Classes 1, 2, 5, 6, 7, 8, and 9 were either Unimpaired or Impaired under the Plan and were not entitled to vote to accept or reject the Plan (collectively, the “Non-Voting Classes”). Thus, Holders of Claims or Interests in the Non-Voting Classes were conclusively presumed to have accepted, or deemed to have rejected, the Plan, as applicable. As evidenced by the Voting Report, the Voting Classes voted to accept the Plan. Based on the foregoing, and as evidenced by the Voting Report, Class 3 (Holders of First Lien Term Loan Claims), Class 4 (Holders of Second Lien Term Loan Claims), Class 10A (Holders of Class A Blackhawk Interests), Class 10B (Holders of Class B Blackhawk Interests), and Class 10C (Holders of Class C Blackhawk Interests) have voted to accept the Plan in accordance with the requirements of sections 1124, 1126, and 1129 of the Bankruptcy Code.

**J. Solicitation.**

10. As described in the Voting Report, the solicitation of votes on the Plan complied with the solicitation procedures approved in the Scheduling Order, was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable rules, laws, and regulations, including the registration requirements under the Securities Act.

11. As described in the Voting Report and the Affidavits, as applicable, prior to the Petition Date, the Plan, the Disclosure Statement, and the applicable Ballot (collectively,

the “Solicitation Package”), and, following the Petition Date, the Confirmation Hearing Notice, were transmitted and served, including to all Holders in the Voting Classes, in compliance with the Bankruptcy Code, including sections 1125 and 1126 thereof, the Bankruptcy Rules, including Bankruptcy Rules 3017 and 3018, the Local Rules, the Scheduling Order, and any applicable nonbankruptcy law. Transmission and service of the Solicitation Package and the Confirmation Hearing Notice was timely, adequate, and sufficient. No further notice is required.

12. As set forth in the Voting Report, the Solicitation Package was distributed to Holders in the Voting Classes that held a Claim against or Interest in the Debtors, as of July 11, 2019 (the “Voting Record Date”). The establishment and notice of the Voting Record Date were approved by the Scheduling Order.

13. The period during which the Debtors solicited acceptances or rejections to the Plan was a reasonable and sufficient period of time for Holders in the Voting Classes to make an informed decision to accept or reject the Plan, and solicitation complied with section 1126(b) of the Bankruptcy Code.

14. Under sections 1126(f) and 1126(g) of the Bankruptcy Code, the Debtors were not required to solicit votes from the Holders of Claims or Interests, as applicable, in the Non-Voting Classes, each of which is conclusively presumed to have accepted, or deemed to have rejected, the Plan.

**K. Plan Supplement.**

15. The Plan Supplement complies with the Bankruptcy Code and the terms of the Plan, and the filing and notice of such documents are good and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable nonbankruptcy law and no other or further notice is required. All documents included in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. Subject to the terms of the Plan



(including Article X of the Plan), the Debtors' right to alter, amend, update, or modify the Plan Supplement before the Effective Date is reserved. The Notice Parties were provided due, adequate, and sufficient notice of the Plan Supplement.

**L. Compliance with Bankruptcy Code Requirements—Section 1129(a)(1).**

16. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code, including sections 1122 and 1123 of the Bankruptcy Code. In addition, the Plan is dated and identifies the Entities submitting it, thereby satisfying Bankruptcy Rule 3016(a).

**(i) Proper Classification—Sections 1122 and 1123.**

17. The classification of Claims and Interests under the Plan is proper under the Bankruptcy Code. Pursuant to sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, Article III of the Plan provides for the separate classification of Claims and Interests into ten Classes, based on differences in the legal nature or priority of such Claims and Interests (other than DIP Claims, Administrative Claims, Professional Fee Claims, and Priority Tax Claims, which are addressed in Article II of the Plan and which are not required to be designated as separate Classes pursuant to section 1123(a)(1) of the Bankruptcy Code). Valid business, factual, and legal reasons exist for the separate classification of the various Classes of Claims and Interests created under the Plan, the classifications were not promulgated for any improper purpose, and the creation of such Classes does not unfairly discriminate between or among Holders of Claims or Interests. In accordance with section 1122(a) of the Bankruptcy Code, each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class. The Plan, therefore, satisfies the requirements of sections 1122(a), 1122(b), and 1123(a)(1) of the Bankruptcy Code.

**(ii) Specified Unimpaired Classes—Section 1123(a)(2).**

18. Article III of the Plan specifies that Claims in Classes 1, 2, and 5 are Unimpaired under the Plan. The Plan, therefore, satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code.

**(iii) Specified Treatment of Impaired Classes—Section 1123(a)(3).**

19. Article III of the Plan specifies the treatment of each Impaired, or potentially Impaired, Class of Claims or Interests under the Plan, including Classes 3, 4, 6, 7, 8, 9, 10A, 10B, and 10C. The Plan, therefore, satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code.

**(iv) No Discrimination—Section 1123(a)(4).**

20. Article III of the Plan provides the same treatment for each Claim or Interest within a particular class unless the Holder of a particular Claim or Interest has agreed to a less favorable treatment with respect to such Claim or Interest. The Plan, therefore, satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

**(v) Adequate Means for Plan Implementation—Section 1123(a)(5).**

21. The Plan and the various documents and agreements set forth in the Plan Supplement provide adequate means for the Plan's implementation, including: (a) the New Organizational Documents; (b) the issuance of New Common Stock; (c) the Reorganized Debtors' entry into the New First Lien Loan Agreement and all related documents; (d) the Reorganized Debtors' entry into the Exit ABL Facility Agreement and all related documents; (e) the Restructuring Transactions Memorandum and the formation of Reorganized Blackhawk; (f) authorizing the Debtors and/or the Reorganized Debtors to take all actions necessary to effectuate the Plan, including those actions necessary to effect the Restructuring Transactions; (g) the cancellation of existing securities and agreements, and the surrender of existing securities

(except as otherwise provided therein); (h) the vesting of the Estate assets in the Reorganized Debtors; (i) the preservation and vesting of certain Causes of Action in the Reorganized Debtors; (j) the appointment of officers, directors, and managers of the Reorganized Debtors; and (k) the continued corporate existence of the Debtors. The Plan, therefore, satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code.

**(vi) Non-Voting Equity Securities—Section 1123(a)(6).**

22. The Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code prohibiting the issuance of nonvoting equity securities. Article IV.N of the Plan provides that the New Organizational Documents will prohibit the issuance of any non-voting equity securities under the Plan, to the extent required by section 1123(a)(6) of the Bankruptcy Code.

**(vii) Directors and Officers—Section 1123(a)(7).**

23. The Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code. In accordance with Article IV.O of the Plan, the identities of the members of the Reorganized Blackhawk Board as of the Effective Date were identified in **Exhibit E** of the Plan Supplement, and vacant positions specified therein will be filled in the ordinary course of business after the Effective Date pursuant to the New Organizational Documents. The selection of the members of the Reorganized Blackhawk Board, including Marc Heimowitz as the initial managing member of Reorganized Blackhawk, is consistent with the interests of all Holders of Claims and Interests, and public policy.

**(viii) Claims and Executory Contracts—Section 1123(b)(1)–(2).**

24. Article III of the Plan leaves Impaired or Unimpaired, as the case may be, each Class of Claims and Interests, and Article V of the Plan provides that, on the Effective Date, except as otherwise provided in the Plan or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, all Executory Contracts

and Unexpired Leases shall be deemed assumed as of the Effective Date, unless such Executory Contract or Unexpired Lease: (a) was assumed or rejected previously by the Debtors; (b) previously expired or terminated pursuant to its own terms; (c) is the subject of a motion to reject filed on or before the Effective Date; or (d) is identified on the Rejected Executory Contracts and Unexpired Lease List. The Debtors provided sufficient notice to each non-Debtor counterparty to an Executory Contract or Unexpired Lease assumed, assumed and assigned, or rejected by the Debtors during the Chapter 11 Cases.

**(ix) Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action—Section 1123(b)(3).**

25. The Plan is consistent with section 1123(b)(3) of the Bankruptcy Code. Article VIII.D of the Plan describes certain releases granted by the Debtors (the “Debtor Release”), Article VIII.E of the Plan provides for the release of the Released Parties by the Releasing Parties (the “Third-Party Release”), Article VIII.F of the Plan provides for exculpation for the Exculpated Parties (the “Exculpation”), and Article VIII.G of the Plan provides for an injunction (the “Injunction”). The Bankruptcy Court has jurisdiction under sections 1334(a) and 1334(b) of the Judicial Code and authority under section 105 of the Bankruptcy Code to approve each of the Debtor Release, the Third-Party Release, the Exculpation, and the Injunction. As has been established based upon the evidence presented at the Confirmation Hearing, such provisions (a) were given in exchange for good, valuable, and adequate consideration after due notice and opportunity for hearing, (b) are appropriately tailored under the facts and circumstances of the Chapter 11 Cases, (c) were integral to the agreements among the various parties in interest and are essential to the formulation and implementation of the Plan, as provided in section 1123 of the Bankruptcy Code, (d) confer substantial benefits on the Estates, (e) are fair, equitable, and reasonable, and (f) are in the best interests of the Debtors,

the Estates, and parties in interest. Further, the failure to implement the Debtor Release, Third-Party Release, Exculpation and Injunction would impair the Debtors' ability to confirm and implement the Plan.

26. The Debtor Release represents a valid exercise of the Debtors' business judgment. The Released Parties provided good and valuable consideration in exchange for the releases—including services, substantial funding (including DIP financing and exit financing), and the consensual reduction or waiver of significant claims, as the case may be—and otherwise facilitated the reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan.

27. The Third-Party Release is consensual with respect to the Releasing Parties. Specifically, the Confirmation Hearing Notice sent to all Notice Parties (including those not entitled to vote on the Plan) and published in *The New York Times*, the *Charleston Gazette-Mail*, and the *Lexington Herald Leader* on July 25, 2019, and the Ballots sent to all Holders of Impaired Claims in the Voting Classes, in each case, unambiguously stated that the Plan contains the Third-Party Release. Accordingly, in light of all of the circumstances, the Third-Party Release satisfies the applicable standards contained in *In re Indianapolis Downs, LLC*, 486 B.R. 286, 303 (Bankr. D. Del. 2013), are fair to the Releasing Parties, and are otherwise appropriate under *In re W.R. Grace & Co.*, 475 B.R. 34, 107 (D. Del. 2012).

28. The Exculpation appropriately affords protection to those parties who constructively participated in and contributed to the Debtors' chapter 11 process consistent with their duties under the Bankruptcy Code, and it is appropriately tailored to protect the Exculpated Parties from inappropriate litigation. The Exculpation granted under the Plan is reasonable in scope as it does not relieve any party of liability for an act or omission to the extent such act or

omission is determined by final order to constitute actual fraud, willful misconduct, or gross negligence.

29. The Injunction is essential to the Plan and is necessary to implement the Plan and to preserve and enforce the Debtor Release, the Third-Party Release, the Exculpation, and discharge provisions in Article VIII of the Plan. The Injunction is appropriately tailored to achieve those purposes.

30. The record of the Confirmation Hearing is sufficient to support the Debtor Release, Third-Party Release, Exculpation and Injunction. Accordingly, based upon the representations of the parties and the evidence proffered, adduced or presented at the Confirmation Hearing, the Debtor Release, Third-Party Release, Exculpation and Injunction are consistent with the Bankruptcy Code and applicable law.

31. The provisions regarding the preservation of Causes of Action in the Plan (including Article IV.Q), including the Plan Supplement, are appropriate, fair, equitable, and reasonable, and are in the best interests of the Debtors, the Estates, and Holders of Claims and Interests.

**(x) Additional Plan Provisions—Section 1123(b)(6).**

32. The other discretionary provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b)(6) of the Bankruptcy Code.

**M. Debtor Compliance with the Bankruptcy Code—Section 1129(a)(2).**

33. The Debtors have complied with the applicable provisions of the Bankruptcy Code and, thus, satisfy the requirements of section 1129(a)(2) of the Bankruptcy Code. Specifically, each Debtor:

- a. is an eligible debtor under section 109 of the Bankruptcy Code and a proper proponent of the Plan under section 1121(a) of the Bankruptcy Code;
- b. has complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court; and
- c. complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126, the Bankruptcy Rules, the Local Rules, any applicable nonbankruptcy law, rule, and regulation, the Scheduling Order, and all other applicable law, in transmitting the Solicitation Package and related documents and notices, and in soliciting and tabulating the votes on the Plan.

**N. Plan Proposed in Good Faith—Section 1129(a)(3).**

34. The Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code.

The Debtors proposed the Plan in good faith and not by any means forbidden by law. In so determining, the Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself, the process leading to Confirmation of the Plan, including the overwhelming support of Holders of Claims or Interests entitled to vote on the Plan, and the transactions to be implemented pursuant thereto. The Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate purpose of allowing the Debtors to implement the Restructuring Transactions, reorganize, and emerge from bankruptcy with a capital and organizational structure that will allow them to conduct their businesses and satisfy their obligations with sufficient liquidity and capital resources.

**O. Payment for Services or Costs and Expenses—Section 1129(a)(4).**

35. The procedures set forth in the Plan for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtors in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, satisfy the objectives of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code.

**P. Directors, Officers, and Insiders—Section 1129(a)(5).**

36. The Debtors have satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code. Article IV.O of the Plan, in conjunction with **Exhibit E** of the Plan Supplement, discloses the identity and affiliations of the individuals proposed to serve as the initial directors and officers of the Reorganized Debtors, and the identity and nature of any compensation for any insider who will be employed or retained by the Reorganized Debtors. Vacant positions specified therein will be filled in the ordinary course of business after the Effective Date pursuant to the New Organizational Documents. The proposed initial directors and officers for the Reorganized Debtors, including Marc Heimowitz as the initial managing member of Reorganized Blackhawk, are qualified, and the appointments to, or continuance in, such offices by the proposed directors and officers is consistent with the interests of the Holders of Claims and Interests and with public policy.

**Q. No Rate Changes—Section 1129(a)(6).**

37. Section 1129(a)(6) of the Bankruptcy Code is not applicable to the Chapter 11 Cases. The Plan proposes no rate change subject to the jurisdiction of any governmental regulatory commission.

**R. Best Interest of Creditors—Section 1129(a)(7).**

38. The Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis attached to the Disclosure Statement as **Exhibit F** and the other evidence related thereto in support of the Plan that was proffered or adduced in the Nystrom Declaration or at, prior to, or in connection with the Confirmation Hearing: (a) is reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was prepared, presented, or proffered; (b) utilizes reasonable and appropriate methodologies and assumptions; (c) has not been controverted by other evidence; and (d) establishes that each Holder of an



Allowed Claim or Interest in each Class will recover at least as much under the Plan on account of such Claim or Interest, as of the Effective Date, as such Holder would receive if the Debtors were liquidated, on the Effective Date, under chapter 7 of the Bankruptcy Code.

**S. Acceptance by Certain Classes—Section 1129(a)(8).**

39. The Plan does not satisfy the requirements of section 1129(a)(8) of the Bankruptcy Code. Classes 1, 2, and 5 constitute Unimpaired Classes, each of which is conclusively presumed to have accepted the Plan in accordance with section 1126(f) of the Bankruptcy Code. The Voting Classes, Classes 3, 4, 10A, 10B, and 10C, have voted to accept the Plan. Although the Debtors are unaware of any Holders of Claims in Class 8 (Section 510(b) Claims), Holders of Class 8 Claims, if any, receive no recovery pursuant to the Plan and are deemed to have rejected the Plan. Holders of Claims or Interests in Classes 6, 7, and 9 either constitute Unimpaired or Impaired Classes, and are each conclusively presumed to have accepted, or deemed to have rejected, the Plan, respectively. Notwithstanding the foregoing, the Plan is confirmable because it satisfies sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.

**T. Treatment of Claims Entitled to Priority Under Section 507(a) of the Bankruptcy Code—Section 1129(a)(9).**

40. The treatment of Administrative Claims, Professional Fee Claims, and Priority Tax Claims, under Article II of the Plan, and of Other Priority Claims under Article III of the Plan, satisfies the requirements of, and complies in all respects with, section 1129(a)(9) of the Bankruptcy Code.

**U. Acceptance By At Least One Impaired Class—Section 1129(a)(10).**

41. The Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code. As evidenced by the Voting Report, each of Class 3 (First Lien Term Loan Claims) and

Class 4 (Second Lien Term Loan Claims) voted to accept the Plan by the requisite number and amount of Claims at each Debtor, determined without including any acceptance of the Plan by any insider (as that term is defined in section 101(31) of the Bankruptcy Code), specified under the Bankruptcy Code.

**V. Feasibility—Section 1129(a)(11).**

42. The Plan satisfies the requirements of section 1129(a)(11) of the Bankruptcy Code. The financial projections attached to the Disclosure Statement as **Exhibit D** and the other evidence supporting Confirmation of the Plan proffered or adduced by the Debtors at, or prior to, or in the Nystrom Declaration filed in connection with, the Confirmation Hearing: (a) are reasonable, persuasive, and credible as of the dates such analysis or evidence was prepared, presented, or proffered; (b) have not been controverted by other evidence; (c) establish that the Plan is feasible and Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtors or any successor to the Reorganized Debtors under the Plan, except as provided in the Plan; and (d) establish that the Reorganized Debtors will have sufficient funds available to meet their obligations under the Plan.

**W. Payment of Fees—Section 1129(a)(12).**

43. The Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code. Article XII.C of the Plan provides for the payment of all fees payable by the Debtors under section 1930(a) of the Judicial Code.

**X. Continuation of Employee Benefits—Section 1129(a)(13).**

44. The Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code. Article V.G of the Plan provides that from and after the Effective Date, the payment of all

retiree benefits, as defined in section 1114 of the Bankruptcy Code, will continue in accordance with applicable law.

**Y. Non-Applicability of Certain Sections—Sections 1129(a)(14), (15), and (16).**

45. Sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to the Chapter 11 Cases. The Debtors owe no domestic support obligations, are not individuals, and are not nonprofit corporations.

**Z. “Cram Down” Requirements—Section 1129(b).**

46. The Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code because (a) at least one Voting Class of Claims at each Debtor voted to accept the Plan and (b) the Plan does not discriminate unfairly and is fair and equitable with respect to the Claims and Interests in the Classes that are deemed to reject the Plan. The Plan may therefore be confirmed despite the fact that not all Impaired Classes have voted to accept the Plan.

**AA. Only One Plan—Section 1129(c).**

47. The Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code. The Plan is the only chapter 11 plan filed in each of the Chapter 11 Cases.

**BB. Principal Purpose of the Plan—Section 1129(d).**

48. The Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act.

**CC. Good Faith Solicitation—Section 1125(e).**

49. The Debtors, the Released Parties, the Exculpated Parties, and any and all affiliates, directors, officers, members, managers, shareholders, partners, employees, attorneys, and advisors of each of the foregoing, as applicable, have acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable

provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to support of the Plan and this Confirmation Order, including the solicitation of acceptances of the Plan, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

**DD. Satisfaction of Confirmation Requirements.**

50. Based on the foregoing, the Plan satisfies the requirements for Confirmation thereof set forth in section 1129 of the Bankruptcy Code.

**EE. Likelihood of Satisfaction of Conditions Precedent to the Effective Date.**

51. Each of the conditions precedent to the Effective Date, as set forth in Article IX.A of the Plan, has been or is reasonably likely to be satisfied or waived in accordance with Section IX.B of the Plan.

**FF. Implementation.**

52. All documents necessary to implement the Plan and all other relevant and necessary documents (including the Exit ABL Facility Documents, the New First Lien Term Loan Agreement, and the New Organizational Documents) have been negotiated in good faith and at arm's length and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements.

**GG. Disclosure of Facts.**

53. The Debtors have disclosed all material facts regarding the Plan, the Plan Supplement, and the adoption, execution, and implementation of the other matters provided for under the Plan involving corporate action to be taken by or required of the Debtors.

**HH. Good Faith.**

54. The Debtors, each of the Consenting Parties, the Prepetition ABL Agent, each of the Prepetition ABL Lenders, the DIP ABL Agent, each of the DIP ABL Lenders, the DIP Term

Agent, each of the DIP Term Lenders, the First Lien Term Loan Agent, the Second Lien Term Loan Agent, the New First Lien Loan Agent, the Patriot Trust and its trustee, the Patriot Trust Debtor Affiliates, and, with respect to each of the foregoing, such Entities' respective directors, managers, officers, employees, financial advisors, attorneys, accountants, investment bankers, consultants, and other professionals, each solely in their capacity as such (collectively, the "Representatives"), have acted in good faith in negotiating and proposing the Plan. The Debtors, each of the Consenting Parties, the Prepetition ABL Agent, each of the Prepetition ABL Lenders, the DIP ABL Agent, each of the DIP ABL Lenders, the DIP Term Agent, each of the DIP Term Lenders, the First Lien Term Loan Agent, the Second Lien Term Loan Agent, the New First Lien Loan Agent, the Patriot Trust and its trustee, the Patriot Trust Debtor Affiliates, and, with respect to each of the foregoing, their Representatives will continue to be acting in good faith if they proceed to: (a) consummate the Plan and the agreements, transactions, and transfers contemplated thereby; and (b) take the actions authorized and directed by this Confirmation Order to reorganize the Debtors' businesses and effect the Restructuring Transactions.

### **ORDER**

IT IS ORDERED, ADJUDGED, DECREED, AND DETERMINED THAT:

55. **Findings of Fact and Conclusions of Law.** The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein and constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable herein by Bankruptcy Rule 9014. To the extent that any finding of fact is determined to be a conclusion of law, it is deemed so, and vice versa.

56. **Confirmation of the Plan.** The Plan, attached hereto as Exhibit A, is confirmed and the Debtors are authorized to enter into and execute all documents and agreements related to the Plan (including all exhibits and attachments thereto and documents referred to therein), and

the execution, delivery, and performance thereafter by the Reorganized Debtors, are hereby approved and authorized.

57. **Disclosure Statement.** The Disclosure Statement is approved in all respects.

58. **Objections.** All objections and all reservations of rights pertaining to Confirmation of the Plan or approval of the Disclosure Statement that have not been withdrawn, waived, resolved, or settled are overruled on the merits.

59. **Deemed Acceptance of Plan as Modified.** The Debtors modified the Plan to address concerns raised by parties in interest and made certain nonmaterial clarifications. The Plan modifications were immaterial and comply with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. Moreover, the Debtors' key constituents affected by such modifications support these changes. Accordingly, no additional solicitation or disclosure was required on account of the modifications and all Holders of Claims and Interests who voted to accept the Plan or who are conclusively presumed to accept the Plan are deemed to have accepted the Plan as modified, revised, supplemented, or otherwise amended (the "Plan Modifications"). No Holder of a Claim or Interest shall be permitted to change its vote as a consequence of the Plan Modifications.

60. **Omission of Reference to Particular Plan Provisions.** The failure specifically to include or to refer to any particular article, section, or provision of the Plan or the Plan Supplement in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provisions, it being the intent of the Court that the Plan and any related documents be confirmed and approved in their entirety.

61. **Plan Classifications Controlling.** The terms of the Plan shall solely govern the classification of Claims and Interests for purposes of the distributions to be made thereunder.

The classifications set forth on the Ballots tendered to or returned by the Holders of Claims in connection with voting on the Plan: (a) were set forth thereon solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of Claims under the Plan for distribution purposes; (c) may not be relied upon by any Holder of a Claim as representing the actual classification of such Claim under the Plan for distribution purposes; and (d) shall not be binding on the Debtor except for voting purposes.

62. **No Action Required; Corporate Action.** No action of the respective directors, equity holders, managers, or members of the Debtors or Reorganized Debtors, as applicable, is required to authorize the Debtors or Reorganized Debtors, as applicable, to enter into, execute, deliver, file, adopt, amend, restate, consummate, or effectuate, as the case may be, the Plan, the Restructuring Transactions, and any contract, assignment, certificate, instrument, or other document to be executed, delivered, adopted, or amended in connection with the implementation of the Plan. To the extent applicable, all matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors, as applicable, and any corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Reorganized Debtors, as applicable. On or, as applicable, prior to the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors (including Marc Heimowitz as the initial managing member of Reorganized Blackhawk), as applicable, are authorized to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated under the Plan (or necessary or

desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the applicable Reorganized Debtors.

63. **Means for Implementation of the Plan.** The provisions governing the means for implementation of the Plan set forth in Article IV of the Plan shall be, and hereby are, approved in their entirety. The Debtors are authorized to take all actions reasonably necessary to implement the Plan on the terms set forth in Article IV. Further, upon the Effective Date, the Debtors or Reorganized Debtors, as applicable, are authorized to make the payments or other distributions set forth in Article II and Article III of the Plan.

64. **Exit Facilities.** On the Effective Date, the Reorganized Debtors shall execute and deliver the New First Lien Loan Documents and the Exit ABL Facility Documents and such documents shall become effective in accordance with their terms. On and after the Effective Date, the New First Lien Loan Documents and the Exit ABL Facility Documents shall constitute legal, valid, and binding obligations of the Reorganized Debtors and be enforceable in accordance with their respective terms. Upon entry into the New First Lien Loan Documents and Exit ABL Facility Documents, all of the claims, liens, and security interests to be granted in accordance with the terms of the New First Lien Loan Documents and the Exit ABL Facility Documents (a) shall be legal, binding, and enforceable liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the New First Lien Loan Documents and the Exit ABL Facility Documents, (b) shall be deemed automatically attached and perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the New First Lien Term Loan Documents and the Exit ABL Facility Documents, and (c) subject to contractual subordination pursuant to the intercreditor agreement between the Exit ABL Agent and the New First Lien Loan Agent, shall not be subject to



avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law. Any consent or waiver granted by any party to the grant or perfection of a Lien under the Credit Documents (as defined in the First Lien Term Loan Agreement or Prepetition ABL Credit Agreement) shall apply to the New First Lien Loan Documents and Exit ABL Facility Documents to the same extent so long as such consent or waiver was not specifically limited to the granting or perfection of a Lien under such Credit Documents.

65. **Restructuring Transactions.** On and after the Confirmation Date, the Debtors or the Reorganized Debtors, as applicable, shall take all actions set forth in the Restructuring Steps Memorandum and may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan that are consistent with and pursuant to the terms and conditions of the Plan and the RSA, which transactions may include, as applicable: (a) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, reorganization, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms to which the applicable parties agree; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, formation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution or other certificates or documentation for other transactions as described in clause (a), pursuant to

applicable state law; (d) the execution and delivery of the Shareholders Agreement and the New Organizational Documents and any certificates or articles of incorporation, bylaws, or such other applicable formation documents (if any) of each Reorganized Debtor; (e) the execution and delivery of the New First Lien Loan Documents and Exit ABL Facility Documents (in both cases, including all actions to be taken, undertakings to be made, and obligations to be incurred and fees and expenses to be paid by the Debtors and/or the Reorganized Debtors, as applicable); (f) the execution and delivery of the New Organizational Documents (including all actions to be taken, undertakings to be made, and obligations to be incurred and fees and expenses to be paid by the Debtors and/or the Reorganized Debtors, as applicable), and the issuance, distribution, reservation, or dilution, as applicable, of the New Common Stock, as set forth herein; (g) the adoption of the Management Incentive Plan and the issuance and reservation of the Management Incentive Plan Equity to the participants in the Management Incentive Plan on the terms and conditions set by the Reorganized Blackhawk Board after the Effective Date; (h) all transactions necessary to provide for the purchase of substantially all of the assets or Interests of any of the Debtors by one or more Entities to be wholly owned by Reorganized Blackhawk, which purchase may be structured as a taxable transaction for United States federal income tax purposes; and (i) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law in connection with the Restructuring Transactions.

66. **Post-Confirmation Transactions.** Prior to the Effective Date, the Debtors and any applicable third parties, with the consent of the Required Consenting Term Lenders and subject to the consent rights and limitations in the DIP ABL Agreement (or the Exit ABL Agent with respect to the treatment, rights, or terms of the Exit ABL Facility), are authorized to take

any and all action as may be deemed necessary or appropriate to consummate any transaction outside the ordinary course of business for the acquisition from (an "Acquisition Transaction") or the sale (a "Sale Transaction") to one or more third parties of any assets (including mining equipment, coal reserves, and related assets) that the Debtors determine in their business judgment is in the best interest of their estates, without further notice or Court order. Subject to customary confidentiality protections and without limiting the applicable consent rights in the preceding sentence, the Debtors shall provide no less than 5 business days written notice prior to the closing on any Sale Transaction and written notice within 5 business days after the closing of any Acquisition Transaction to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Consenting Term Lenders; (iii) counsel to the Ad Hoc Group of First Lien Lenders; (iv) counsel to the DIP ABL Agent; (v) counsel to the DIP Term Agent; (vi) counsel to the First Lien Term Loan Agent; (vii) counsel to the Second Lien Term Loan Agent; (viii) counsel to the Objecting Land Owners (as defined herein); and (ix) any known affected creditors, including, without limitation, the lessors or sublessors of any unexpired leases or subleases that may be affected by such Sale Transaction or Acquisition Transaction, as applicable. The foregoing authorization shall apply for a period of 60 days after the Confirmation Date (the "Authorization Time Period"). The Debtors will be required to obtain either an extension of the Authorization Time Period or separate approval by the Bankruptcy Court after notice and a hearing before entering into a binding agreement with respect to any Acquisition Transaction or Sale Transaction after the Authorization Time Period if the Effective Date has not occurred by such time, *provided* that if the Debtors have entered into a binding agreement for an Acquisition Transaction or Sale Transaction during the Authorization Time Period, the Debtors may close that transaction at any time, including after the Authorization

Time Period, without Court approval but subject to the applicable notice requirements set forth above.

67. **Vesting of Assets in the Reorganized Debtors.** Except as otherwise provided in the Plan or the Plan Supplement, or in any agreement, instrument, or other document incorporated in the Plan, on the Effective Date, all property in each Debtor's Estate, all Causes of Action, and any property acquired by any of the Debtors under the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances (except for Liens securing obligations under the Exit ABL Facility Documents and the New First Lien Loan Documents and the Liens securing obligations on account of Other Secured Claims that are Reinstated pursuant to the Plan, if any). On and after the Effective Date, except as otherwise provided in the Plan, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

68. **Cancellation of Existing Agreements, Notes, and Equity Interests.** On the Effective Date, except to the extent otherwise provided in the Plan, all notes, instruments, certificates, and other documents evidencing Claims shall be cancelled, and the obligations of the Debtors or the Reorganized Debtors and any non-Debtor Affiliates thereunder or in any way related thereto shall be discharged and deemed satisfied in full, and the Term Loan Agents shall be released from all duties thereunder; *provided, however*, that notwithstanding Confirmation or the occurrence of the Effective Date, any credit document or agreement that governs the rights of the Holder of a Claim or Interest shall continue in effect solely for purposes of (a) allowing Holders of Allowed Claims to receive distributions under the Plan, (b) allowing and preserving

the rights of the Term Loan Agents and DIP Agents to make distributions pursuant to the Plan, (c) preserving the Term Loan Agents', the Prepetition ABL Agent's, and the DIP Agents' rights to compensation and indemnification as against any money or property distributable to the Prepetition ABL Lenders, Holders of First Lien Term Loan Claims, Second Lien Term Loan Claims, DIP ABL Claims, and DIP Term Claims, including permitting the Term Loan Agents and DIP Agents to maintain, enforce, and exercise its charging liens against such distributions, (d) preserving all rights, including rights of enforcement, of the Term Loan Agents, the Prepetition ABL Agent, and DIP Agents against any person other than a Released Party (including the Debtors), including with respect to indemnification or contribution from the Prepetition ABL Lenders, Holders of the First Lien Term Loan Claims, Second Lien Term Loan Claims, DIP ABL Claims, and DIP Term Claims pursuant and subject to the terms of the Prepetition ABL Credit Agreement, the First Lien Term Loan Agreement, the Second Lien Term Loan Agreement, the DIP ABL Agreement, and the DIP Term Agreement as in effect on the Effective Date, (e) permitting the Term Loan Agents, the Prepetition ABL Agent, and DIP Agents to enforce any obligation (if any) owed to the Term Loan Agents, the Prepetition ABL Agent, or DIP Agents under the Plan, (f) permitting the Prepetition ABL Agent, the Term Loan Agents, and the DIP Agents to appear in the Chapter 11 Cases or in any proceeding in the Bankruptcy Court or any other court, (g) permitting the DIP Agents, the DIP ABL Lenders, the DIP Term Lenders, the Prepetition ABL Agent, the Prepetition ABL Lenders, the First Lien Term Loan Agent, the First Lien Term Loan Lenders, the Second Lien Term Loan Agent, and the Second Lien Term Loan Lenders to assert any rights with respect to the Contingent DIP Term Obligations, the Contingent DIP ABL Obligations, the Contingent Prepetition ABL Obligations, the Contingent First Lien Term Loan Obligations or the Contingent Second Lien

Term Loan Obligations, as applicable, and (h) permitting the Term Loan Agents, the Prepetition ABL Agent, and the DIP Agents to perform any functions that are necessary to effectuate the foregoing; *provided, further, however*, that (i) the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan, or result in any expense or liability to the Debtors or Reorganized Debtors, as applicable, except as expressly provided for in the Plan and (ii) except as otherwise provided in the Plan, the terms and provisions of the Plan shall not modify any existing contract or agreement that would in any way be inconsistent with distributions under the Plan. The Term Loan Agents, the Prepetition ABL Agent, and the DIP Agents shall be discharged and shall have no further obligation or liability except as provided in the Plan and Confirmation Order, and after the performance by the Term Loan Agents, the Prepetition ABL Agent, and the DIP Agents and their representatives and professionals of any obligations and duties required under or related to the Plan or Confirmation Order, the Term Loan Agents, the Prepetition ABL Agent, and the DIP Agents shall be relieved of and released from any obligations and duties arising thereunder. The fees, expenses, and costs of the Term Loan Agents, the Prepetition ABL Agent, and the DIP Agents, including fees, expenses, and costs of its professionals incurred after the Effective Date in connection with the First Lien Term Loan Agreement, the Second Lien Term Loan Agreement, the Prepetition ABL Agreement, the DIP Term Agreement, and the DIP ABL Agreement, as applicable, and reasonable and documented costs and expenses associated with effectuating distributions pursuant to the Plan will be paid by the Reorganized Debtors in the ordinary course.

69. **Treatment of Executory Contracts and Unexpired Leases.** The provisions governing the treatment of Executory Contracts and Unexpired Leases set forth in Article V of the Plan shall be, and hereby are, approved in their entirety, other than that the treatment of any

Claims arising by the rejection by any Debtor of any Executory Contract or Unexpired Lease shall be determined by further Court order or agreement of the Debtors or Reorganized Debtors, as applicable, and the affected contract counterparty and shall not be automatically treated as a General Unsecured Claim. For the avoidance of doubt, the Reorganized Debtors shall assume all Executory Contracts and Unexpired Leases, including any amendments, modifications, or supplements thereto, unless such Executory Contract or Unexpired Lease: (a) was assumed or rejected previously by the Debtors; (b) previously expired or terminated pursuant to its own terms; (c) is the subject of a motion to reject filed on or before the Effective Date; or (d) is identified as an Executory Contract or Unexpired Lease on the Rejected Executory Contracts and Unexpired Lease List. Any Executory Contract or Unexpired Lease that is subject to an unresolved objection to the assumption of such Executory Contract or Unexpired Lease that is pending as of the Effective Date will not be assumed until entry of an order resolving the dispute and approving the assumption of such Executory Contract or Unexpired Lease or as may be agreed upon by the Debtors or the Reorganized Debtors and the counterparty; *provided* that after the Effective Date, the Reorganized Debtors may settle any dispute regarding the amount of any Cure Cost without any further notice to any party or any action, order, or approval of the Bankruptcy Court; *provided, further*, that resolution of any pending objection to the assumption or rejection of an Executory Contract or Unexpired Lease will not delay the Effective Date. If the Debtors intend to modify the treatment of an Executory Contract or Unexpired Lease post-Confirmation Date but prior to the Effective Date, the Debtors shall either file a Plan Supplement to that effect and the counterparty to each Executory Contract or Unexpired Lease shall have 14 days from the filing of such Plan Supplement to object to such treatment or file a

separate motion with notice to the counterparty, which motion will be set for a hearing in accordance with the Local Rules.

70. **Provisions Governing Distributions.** The distribution provisions of Article VI of the Plan shall be, and hereby are, approved in their entirety. Except as otherwise set forth in the Plan or this Confirmation Order, the Disbursing Agent shall make all distributions required under the Plan. The timing of distributions required under the Plan or this Confirmation Order shall be made in accordance with and as set forth in the Plan or this Confirmation Order, as applicable.

71. **Procedures for Resolving Disputed, Contingent, and Unliquidated Claims or Equity Interests.** The procedures for resolving contingent, unliquidated, and disputed Claims contained in Article VII of the Plan shall be, and hereby are, approved in their entirety. If any Proof of Claim is filed in the Chapter 11 Cases, the Debtors or Reorganized Debtors, as applicable, must address such Claim and provide notice to the Court regarding whether such Claim will need to be addressed by the Court.

72. **Release, Exculpation, Discharge, and Injunction Provisions.** The release, exculpation, discharge, injunction, and related provisions set forth in Article VIII of the Plan shall be, and hereby are, approved and authorized in their entirety, including, but not limited to:

- a. **Debtor Release.** The Debtor Release set forth in Article VIII.D of the Plan is hereby approved.
- b. **Third-Party Release.** The Third-Party Release set forth in Article VIII.E of the Plan is hereby approved.
- c. **Exculpation.** The Exculpation set forth in Article VIII.F of the Plan is hereby approved.



d. **Injunction.** The Injunction provision set forth in Article VIII.G of the Plan is hereby approved.

73. **Release of Liens.** The Release of Liens provision set forth in Article VIII.C of the Plan is hereby approved. The Holders of mortgages, deeds of trust, Liens, pledges, or other security interests subject to release pursuant to Article VIII.C shall execute such documents as may be reasonably requested by the Debtors or the Reorganized Debtors, as applicable, to reflect or effectuate such releases, and all of the right, title, and interest of any Holders of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns.

74. **Professional Fee Escrow Account.** As soon as reasonably practicable after the Confirmation Date, and no later than one Business Day prior to the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and for no other Entities until all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. Such funds shall not be considered property of the Estates, the Debtors, or the Reorganized Debtors.

75. The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals by the Debtors or the Reorganized Debtors, as applicable, from the funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by an order of the Bankruptcy Court; *provided* that the

Debtors' and the Reorganized Debtors' obligations to pay Allowed Professional Fee Claims shall not be limited nor be deemed limited to funds held in the Professional Fee Escrow Account. When all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court, any remaining funds held in the Professional Fee Escrow Account shall promptly be paid to the Reorganized Debtors without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

76. **Other Fees and Expenses.** Notwithstanding anything to the contrary in the Plan or this Confirmation Order, without any further notice to or action, order, or approval of the Bankruptcy Court, the Debtors or the Reorganized Debtors, as applicable, shall pay on the Effective Date all then-outstanding reasonable and documented unpaid fees and expenses incurred on or before the Effective Date by all of the attorneys, advisors, and other professionals payable pursuant to the Plan or the DIP Order. Such parties shall not be required to file any application under sections 330 or 331 of the Bankruptcy Code or otherwise with regard to such fees and expenses. The Reorganized Debtors shall continue to pay when due and payable in the ordinary course, reasonable and documented fees and expenses of the Ad Hoc Crossholder Lender Group Advisors (as defined in the RSA), the Ad Hoc First Lien Lender Group Advisors (as defined in the RSA), and counsel to the DIP ABL Agent related to implementation, consummation, or defense of the Plan.

77. **Utility Order.** On or as reasonably practicable after the Effective Date, and only after all postpetition, but pre-Effective Date, Claims on account of utility services have been paid and any disputes with respect to such Claims have been resolved, the Reorganized Debtors are authorized to withdraw the funds held in the segregated escrow account pursuant to the *Final*

*Order (A) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (B) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (C) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (D) Granting Related Relief* [Docket No. 168] (the "Utility Order"), and the Reorganized Debtors shall have no further obligations to comply with the Utility Order. If applicable, all utilities, including any Person or Entity that received a deposit or other form of adequate assurance of performance under section 366 of the Bankruptcy Code during the Chapter 11 Cases in compliance with the Utility Order or otherwise, must return such deposit or other form of adequate assurance of performance to the Debtors or the Reorganized Debtors, as the case may be, on or before the Effective Date, *provided* that any such utility may apply such deposit or other form of adequate assurance of performance to the Reorganized Debtors' account within 30 days of the Effective Date.

78. **Conditions to Effective Date.** The provisions governing the conditions precedent to the Effective Date set forth in Article IX of the Plan shall be, and hereby are, approved in their entirety. The Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order, subject to satisfaction or waiver of such provisions pursuant to their terms.

79. **Modifications or Amendments.** The provisions governing the modification, revocation, or withdrawal of the Plan set forth in Article X of the Plan shall be, and hereby are, approved in their entirety.

80. **Retention of Jurisdiction.** The provisions governing the retention of jurisdiction set forth in Article XI of the Plan shall be, and hereby are, approved in their entirety. The Court

shall retain exclusive jurisdiction over the matters arising in, and under, and related to, the Chapter 11 Case, as set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

81. **Immediate Binding Effect.** Subject to Article IX of the Plan and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the Plan and the Plan Supplement shall be immediately effective and enforceable to the fullest extent permitted under the Bankruptcy Code and applicable nonbankruptcy law.

82. Notwithstanding anything to the contrary in the Plan, the Bankruptcy Rules, including Bankruptcy Rule 3020(e), or otherwise, this Confirmation Order shall become immediately effective and enforceable upon its entry.

83. **Payment of Statutory Fees.** All fees payable pursuant to section 1930(a) of the Judicial Code shall be paid by the Debtors or Reorganized Debtors, as applicable, for each quarter (including any fraction thereof) until the Chapter 11 Cases are dismissed or closed, whichever occurs first.

84. **Effectiveness of All Actions.** Except as set forth in the Plan, all actions authorized to be taken pursuant to the Plan shall be effective on, before, or after the Effective Date pursuant to this Confirmation Order, without further application to, or order of this Court, or further action by the respective officers, directors, managers, members, or stockholders of the Debtors or the Reorganized Debtors and with the effect that such actions had been taken by unanimous action of such officers, directors, managers, members, or stockholders. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, and regulations, of all states and any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, agreements, any

amendments or modifications thereto, and any other acts and transactions referred to in or contemplated by the Plan, the Plan Supplement, the Disclosure Statement, and any documents, instruments, securities, agreements, and any amendments or modifications thereto.

85. **Effect of Conflict Between Plan and Confirmation Order.** Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement, the Plan Supplement, or any other order referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control; *provided, however*, with respect to any conflict or inconsistency between the Plan and this Confirmation Order, this Confirmation Order shall govern.

86. **Nonseverability of Plan Provisions and Confirmation Order.** Each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the consent of the Debtors; and (c) nonseverable and mutually dependent. Each provision of this Confirmation Order is nonseverable and mutually dependent on each other term of this Confirmation Order and the Plan.

87. **Failure of Consummation.** If the Effective Date does not occur and the Debtors file a notice withdrawing the Plan, then: (a) the Plan and this Confirmation Order will be null and void in all respects; (b) any settlement or compromise embodied in the Plan or this Confirmation Order, assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan will be null and void in all respects; and (c) nothing contained in the Plan or this Confirmation Order shall (i) constitute a waiver or release of any Claims, Interests, or Causes of Action, (ii) prejudice in any manner the

rights of any Debtor or any other Entity, or (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity, and all parties shall revert to the status quo as if this Confirmation Order had not been entered.

88. **Terms of Injunctions or Stays.** Unless otherwise provided in the Plan or in this Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or this Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or this Confirmation Order (including the Injunction) shall remain in full force and effect in accordance with their terms.

89. **Post-Confirmation Modifications.** Without need for further order or authorization of the Court, the Debtors, with the reasonable consent of the Required Consenting Term Lenders and subject to the consent rights and limitations in the DIP ABL Agreement, or the Reorganized Debtors, as applicable, are authorized and empowered to make any and all modifications to any and all documents that are necessary to effectuate the Plan that do not materially modify the terms of such documents and are consistent with the Plan and this Confirmation Order. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan and the consent rights and limitations in the DIP ABL Agreement (or the Exit ABL Agent with respect to provisions relating to the treatment, rights, or terms of the Exit ABL Facility), the Debtors and the Reorganized Debtors expressly reserve their respective rights to revoke or withdraw, or to alter, amend, or modify materially the Plan with respect to such Debtor, one or more times after Confirmation, and, to the extent necessary, may initiate

proceedings in the Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article X of the Plan.

90. **Certain Government Matters.** Notwithstanding any other provision in the Plan, Plan Supplement, Confirmation Order, or related plan documents, nothing in the Plan, the Plan Supplement, the Confirmation Order, or related plan documents shall discharge or release the Debtors, the Reorganized Debtors, or any non-debtor from any right, claim, liability, or Cause of Action of the United States or any State, or impair the ability of the United States or any State to pursue any claim, liability, right, defense, or Cause of Action against any Debtor, Reorganized Debtor, or non-debtor. Contracts, purchase orders, agreements, leases, covenants, guaranties, indemnifications, operating rights agreements, or other interests of or with the United States or any State shall be, subject to any applicable legal or equitable rights or defenses of the Debtors or the Reorganized Debtors under applicable non-bankruptcy law, paid, treated, determined and administered in the ordinary course of business as if the Chapter 11 Cases were never filed and the Debtors and the Reorganized Debtors shall comply with all applicable non-bankruptcy law. All claims, liabilities, rights, Causes of Action, or defenses of or to the United States or any State shall survive the Chapter 11 Cases as if they had not been commenced and be determined in the ordinary course of business, including in the manner and by the administrative or judicial tribunals in which such rights, defenses, claims, liabilities, or Causes of Action would have been resolved or adjudicated if the Chapter 11 Cases had not been commenced; *provided*, that nothing in the Plan or the Confirmation Order shall alter any legal or equitable rights or defenses of the

Debtors or the Reorganized Debtors under non-bankruptcy law with respect to any such claim, liability, or Cause of Action. Without limiting the foregoing, for the avoidance of doubt, nothing shall: (a) require the United States or any State to file any proofs of claim or administrative expense claims in the Chapter 11 Cases for any right, claim, liability, defense, or Cause of Action; (b) affect or impair the exercise of the United States' or any State's police and regulatory powers against the Debtors, the Reorganized Debtors, or any non-debtor; (c) be interpreted to set cure amounts or to require the United States or any State to novate or otherwise consent to the transfer of any federal or state contracts, purchase orders, agreements, leases, covenants, guaranties, indemnifications, operating rights agreements or other interests; (d) affect or impair the United States' or any State's rights and defenses of setoff and recoupment, or ability to assert setoff or recoupment against the Debtors or the Reorganized Debtors and such rights and defenses are expressly preserved; (e) constitute an approval or consent by the United States or any State without compliance with all applicable legal requirements and approvals under non-bankruptcy law; or (f) relieve any party from compliance with all licenses and permits issued by Governmental Units in accordance with non-bankruptcy law. Additionally, also for the avoidance of doubt, notwithstanding any other provision in the Plan, the Plan Supplement, the Confirmation Order, or related plan documents, nothing relieves the Debtors or the Reorganized Debtors from their obligations to comply with the Communications Act of 1934, as amended, and the rules, regulations, and orders promulgated thereunder by the FCC. No transfer of any FCC license or authorization held by the Debtors or transfer of control of the Debtors or transfer of control of an FCC licensee controlled by the Debtors shall take place prior to the issuance of FCC regulatory approval for such transfer pursuant to applicable FCC regulations. The FCC's rights and powers to take any action pursuant to its regulatory authority including, but not limited



to, imposing any regulatory conditions on any of the above described transfers, are fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or authority. In addition, nothing herein relieves the Debtors or the Reorganized Debtors from their obligations to comply with the Atomic Energy Act of 1954, as amended, and the rules, regulations and orders promulgated thereunder by the NRC. No transfer of any NRC licenses held by the Debtors or transfer of control of the Debtors or transfer of control of an NRC licensee controlled by the Debtors shall take place prior to the issuance of NRC regulatory approval for such transfer pursuant to applicable NRC regulations. The NRC's rights and powers to take any action pursuant to its regulatory authority including, but not limited to, imposing any regulatory conditions on any of the above described transfers, are fully preserved, and nothing herein shall proscribe or constrain the NRC's exercise of such power or authority.

**91. Provisions Resolving Certain Objections.**

a. Notwithstanding any language to the contrary in the Plan or this Confirmation Order, all interests in real property that revest in each Reorganized Debtor shall remain subject to any easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests that are of record in the applicable real property records.

b. Notwithstanding anything to the contrary in this Confirmation Order, the Plan or the Plan Supplement, and as a supplement to Article V(D) of the Plan, on and after the Effective Date: (i) the Reorganized Debtors shall assume, pursuant to sections 105 and 365 of the Bankruptcy Code, all of the insurance policies issued to or providing coverage to any of the Debtors and any agreements related thereto in their entirety and without modification in any way and without any limitation or exception set

forth in the Plan and (ii) the Reorganized Debtors shall be liable in full for all of their and the Debtors' obligations under such insurance policies and related agreements regardless of when such obligations arise.

c. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, Wayne Supply Company ("Wayne") and Cecil I. Walker Machinery Company ("Walker") hereby have, retain and reserve any and all rights, claims, causes of action, defenses and remedies at law or in equity, whether arising prior to or after the Petition Date, with respect to their Claims and any and all contracts, leases and agreements, including, but not limited to, any and all executory contractors and/or unexpired leases. Nothing in the Plan or this Confirmation Order shall constitute a waiver, release or discharge of such rights, claims, causes of action, defenses and remedies nor enjoin the assertion or exercise thereof, including, but not limited to, as such may arise, be asserted or exercised in connection with Claims of either Wayne or Walker that are: (1) disputed; (2) not Allowed; (3) not paid in the ordinary course of business; (4) not satisfied according to the terms, conditions and obligations of the contract, lease or agreement governing such Claim, including, but not limited to, any and all executory contractors and/or unexpired leases; or (5) not paid as otherwise provided for in the Plan or as required by the Bankruptcy Code.

d. Notwithstanding anything to the contrary in the Disclosure Statement, the Plan, the Plan Supplement, the New First Lien Loan Documents, the Exit ABL Facility Documents, the Confirmation Order, and any other document related to any of the foregoing (including, without limitation, any provision that purports to be preemptory or supervening, grants an injunction or release): (a) on the Effective Date, the Debtors shall

assume and the Reorganized Debtors shall take assignment of the Leases<sup>3</sup> (and all obligations related to mining permits related to the Leases (collectively, the “Permits”)) in their entirety; (b) all debts, duties, covenants, obligations, and liabilities of the Debtors and the Land Owners (if any) under or related to the Leases whether arising before or after the Effective Date (including, without limitation, before or after the Petition Date), shall survive and shall not be amended, modified, waived, released, discharged, or impaired in any respect as a result of the confirmation of the Plan and occurrence of the Effective Date; (c) the Reorganized Debtors and the Land Owners will continue to be bound by the Leases in accordance with their terms as if the Chapter 11 Cases had not occurred (other than prior to the Effective Date, any assumption and/or assumption and assignment of such Leases or any Restructuring Transactions contemplated by the Plan provided any assumption and/or assumption and assignment is in accordance with section 365 of the Bankruptcy Code); (d) the Claims of the Land Owners, including, without limitation, Cure

---

<sup>3</sup> For the purposes of this subsection, “Leases” shall mean all assumed unexpired leases and subleases (and any related guaranties) with any lessors and/or sublessors (collectively, the “Land Owners”), including, without limitation, Leases with the following Land Owners (such objecting Land Owners, collectively, the “Objecting Land Owners”): Penn Virginia Operating Co.; LLC, Natural Resource Partners L.P.; ACIN LLC; WPP LLC; Kentucky River Properties LLC; Timberlands LLC; KYMAC Land LLC; Shonk Land Company LLC; H.A. Robson LLC; PRC Holdings, LLC; Prichard School, L.L.C.; City National Bank of West Virginia as Successor Trustee under a Trust Agreement dated December 30, 1983, by and between Kanawha Banking & Trust Company, N.A., Trustee, and A.M. Prichard, III, Sarah Ann Prichard and Lewis Prichard and their respective spouses, as amended; Kanawha Boone Holdings, LLC; Ohio River Holdings, LLC successor by conveyance by Deed dated September 1, 2015, by LML-AWW Holdings, L.L.C., RBL-AAW Holdings, LLC; AAW Holdings, LLC; LaFollette Holdings, Ltd.; James A. LaFollette Holdings, LLC; Robert B. LaFollette Holdings, LLC; Wright Holdings, LLC; LML Properties, L.L.C.; Riverside Park, Inc.; Broun Properties, L.L.C.; Garland Fork, LLC, as successor lessor to Lawson Heirs Incorporated; E. Fontaine Broun and Rahel D. Broun; Virginia Broun Lawson and Robert W. Lawson, Jr.; Kanawha Valley Bank, N.A. and W.t. O’Farrell, as Trustee under the Last Will and Testament of Thomas B. Jackson; Kanawha Valley Bank, N.A. as Special Receiver of the Estate of Thomas L. Broun; Louise Fontaine Powers; Anne Conway Powers; Anne Record Ervin and Clyde Ervin; Philip Whittemore Powers and Lois Jenks Powers; Jean J. Powers Shield and John Shield; Jean J. Powers Shield, as Executrix of the Estate of Thomas B. Powers, Jr.; Thomas Broun Powers, Jr.; Stephen Jordan Powers; Blue Eagle Land, LLC; Kinder Morgan Resources, LLC; Lorado LLC; Imperial Coal Co.; Black Band LLC; and Chesapeake Mining Co.

Claims, arising under or related to the Leases (whether arising before or after the Effective Date (including, without limitation, before or after the Petition Date) (1) shall be paid by the Reorganized Debtors in the ordinary course of businesses, *provided* that the Debtors, the Reorganized Debtors, and the Land Owners retain any and all rights, defenses, and/or counterclaims under the Leases (and any other applicable documents or agreements) and applicable law with respect to such Claims, and (2) shall not be discharged or released by the Plan or the Confirmation Order or in any manner whatsoever by the Chapter 11 Cases; (e) disputes related to Cure Claims of the Objecting Land Owners, if any, due under their applicable Leases shall be addressed by the Bankruptcy Court and the Bankruptcy Court retains jurisdiction over such disputes; (f) the Objecting Land Owners need not file any objection to the Plan or to a proposed cure amount, and the Land Owners shall not be subject to any bar date or similar deadline governing cure amounts or Claims; (g) all obligations under the Leases of the Debtors, the Reorganized Debtors, and the Land Owners, if any, or of any other persons or entities associated directly or indirectly with environmental conditions, discharges, or obligations related to reclamation, remediation, restoration, or mitigation, or acts or omissions related thereto (collectively, the “Environmental Matters”), whether on account of an act or omission by any of the Debtors, the Reorganized Debtors, or the Land Owners, any of their respective sub-lessees, contractors, agents, and/or affiliates, or any bonding company or governmental agency that assumes responsibility for operations in connection with any of the applicable properties covered by such Leases or any portion thereof, or any other person operating on such properties with the permission or consent of the Debtors, the Reorganized Debtors, or the Land Owners, shall not be discharged, waived, limited, or released as a result of the

Plan, this Confirmation Order, the Chapter 11 Cases, or by the occurrence of the Effective Date, and further the obligations related to Environmental Matters are hereby specifically preserved regardless of whether the fact or possibility of the Environmental Matters are known to anyone to exist prior to the Effective Date; (h) the Land Owners' rights to indemnification from the Debtors and the Reorganized Debtors or the Debtors and the Reorganized Debtors' rights to indemnification from the Land Owners, if any, in each case as provided in the Leases, shall not be altered, affected, or vitiated as a result of the confirmation of the Plan and occurrence of the Effective Date, irrespective of the fact or possibility that Environmental Matters do, or may, exist prior to Effective Date; (i) nothing in the Plan (including, without limitation, the Third-Party Release and Exculpation provisions set forth in the Plan) or the Confirmation Order shall release, discharge, or terminate (1) any claim or Cause of Action held by the Land Owners against any person (including, without limitation, any of the Released Parties) arising under or related to the Leases, performance under the Leases, and/or defaults under the Leases, or (2) any guaranty or indemnity issued, granted, or given by any person (including, without limitation, any of the Released Parties) in favor of any of the Land Owners, or any predecessor, successor, assign, or member of any of the Land Owners, or of any guaranty or indemnity of, or with respect to, the Leases; (j) the Land Owners, the Debtors, and the Reorganized Debtors specifically reserve, and do not hereby waive, any rights ancillary to any Lease, permit, and/or bond transfer process, with regard to any laws and regulations governing the same, or with respect to adequacy of bonding and security in connection with reclamation and water treatment, and nothing herein shall be construed to constitute a waiver of any of the Debtors', the Reorganized Debtors', or the

Land Owner's rights with respect to any transfer process; and (k) the Leases, related properties, and coal and/or minerals in or under such properties shall not be Collateral subject to Liens (each as defined in the New First Lien Loan Documents and the ABL Facility Documents) to the extent they constitute Excluded Assets (as defined in the New First Lien Loan Documents and the Exit ABL Facility Documents filed as part of the Plan Supplement at Docket No. 196). For the avoidance of doubt, nothing in the Disclosure Statement, the Plan, the Plan Supplement, the New First Lien Loan Documents, the Exit ABL Facility Documents, the Confirmation Order or any other document related to any of the foregoing or anything in the Restructuring Transactions contemplated by the Plan shall authorize any assignment and/or transfer of the Leases or Permits (including, without limitation, the grant of any Liens in connection with the New First Lien Loan Documents and the Exit ABL Facility Documents) occurring after the Effective Date in violation of the terms of the Leases or applicable law.

e. Notwithstanding anything to the contrary in the Disclosure Statement, the Plan, the Plan Supplement, the New First Lien Loan Documents, the Exit ABL Facility Documents, the Confirmation Order, and any other document related to any of the foregoing (including, without limitation, any provision that purports to be preemptory or supervening, grants an injunction or release), aside from other cure amounts due and owing from the Debtors to Shonk Land Company, LLC ("Shonk"), the Debtors and, after the Effective Date, the Reorganized Debtors, shall (A) pay \$1,787,991.00 in the aggregate to Shonk as the cure amount relating to the wheeling and loading fee correction amount for the time period October 2015 through June 2019 for the Robin Land Company Lease (the "Robin Land Company Lease Correction Amount") and such

amount shall be due and payable as follows: (i) five (5) days after the Effective Date, \$250,000.00, (ii) October 15, 2019, \$250,000.00, (iii) November 15, 2019, \$0.00, (iv) December 1, 2019, \$250,000.00, (v) December 15, 2019, \$250,000.00, (vi) January 15, 2020 and on the 15th day of each of the four (4) successive months thereafter, \$150,000.00 per month, and (vii) June 15, 2020, \$37,991.00; and (B) pay \$248,803.14 in the aggregate to Shonk on October 1, 2019 for the 1st half of 2019 property taxes with respect to the Panther-PG&H Lease (\$6,626.63), the Wildcat Lease (\$9,749.78), the Panther Lease (\$106,381.17), and the Robin Land Company Lease (\$126,045.56). If the Debtors or the Reorganized Debtors, as the case may be, fail or default in the payment of any sums required hereunder when and as due and payable, such failure or default shall constitute a failure or default in the payment of sums required by the Robin Land Company Lease with respect to the Robin Land Company Lease Correction Amount and the applicable lease with respect to the 1st half of 2019 property taxes and as such Shonk shall have all rights and remedies as set forth under the Robin Land Company Lease with respect to the Robin Land Company Lease Correction Amount and the applicable lease with respect to the 1st half of 2019 property taxes dealing with a failure or default in the payment of any sums required to be paid by the lessee under the Robin Land Company Lease or the applicable lease.

92. **Notice of Confirmation and Effective Date.** In accordance with Bankruptcy Rules 2002 and 3020(c), within 10 business days of the Effective Date, the Reorganized Debtors shall cause the notice of Confirmation (the “Confirmation Notice”), substantially in the form attached hereto as **Exhibit B**, to be served by United States mail, first class postage prepaid, by hand, or by overnight courier service to all parties served with the Confirmation Hearing Notice;

*provided* that no notice or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtors mailed a Confirmation Hearing Notice, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address,” or “forwarding order expired,” or similar reason, unless the Debtors or Reorganized Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity’s new address. Mailing of the Confirmation Notice in the time and manner set forth in this paragraph shall be good, adequate, and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c) and no further notice is necessary.

93. The Confirmation Notice shall constitute sufficient notice of the entry of this Confirmation Order to such filing and recording officers, and shall be a recordable instrument notwithstanding any contrary provision of applicable nonbankruptcy law.

94. **Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

95. **Waiver of Filings.** Any requirement under section 521 of the Bankruptcy Code or Bankruptcy Rule 1007 obligating the Debtors to file any list, schedule, or statement with the Court or the U.S. Trustee is permanently waived as to any such list, schedule, or statement not filed so long as the Effective Date occurs within 60 days of the Confirmation Date.

96. **Final Order.** This Confirmation Order is intended to be a final order and the period within which an appeal must be filed commences upon the entry hereof.

Dated: August 29th, 2019  
Wilmington, Delaware



LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE



**Exhibit A**

**The Plan**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
BLACKHAWK MINING LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11595 (LSS)
	)	
Debtors.	)	(Jointly Administered)

**DEBTORS' MODIFIED JOINT PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION**

James H.M. Sprayregen, P.C.  
 Ross M. Kwasteniet, P.C. (admitted *pro hac vice*)  
 Joseph M. Graham (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
 300 North LaSalle  
 Chicago, Illinois 60654  
 Telephone: (312) 862-2000  
 Facsimile: (312) 862-2200

Christopher M. Samis (DE 4909)  
 L. Katherine Good (DE 5101)  
**POTTER ANDERSON CORROON LLP**  
 1313 North Market Street, 6th Floor  
 P.O. Box 951  
 Wilmington, Delaware 19801-6108  
 Telephone: (302) 984-6000  
 Facsimile: (302) 658-1192

-and-

Stephen E. Hessler, P.C. (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
 601 Lexington Avenue  
 New York, New York 10022  
 Telephone: (212) 446-4800  
 Facsimile: (212) 446-4900

*Co-Counsel to the Debtors and Debtors in Possession*

Dated: August 26, 2019

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Blackhawk Mining LLC (5600); Blackhawk Coal Sales, LLC (9456); Blackhawk Land and Resources, LLC (7839); Blackhawk River Logistics, LLC (3388); Blue Creek Mining, LLC (2427); Blue Diamond Mining, LLC (3488); Eagle Shield, LLC (6721); FCDC Coal, Inc. (6188); Guyandotte Mining, LLC (4882); Hampden Coal, LLC (8241); Kanawha Eagle Mining, LLC (0586); Logan & Kanawha, LLC (3178); Panther Creek Mining, LLC (0627); Pine Branch Land, LLC (9661); Pine Branch Mining, LLC (9681); Pine Branch Resources, LLC (9758); Redhawk Mining, LLC (0852); Rockwell Mining, LLC (3874); Spruce Pine Land Company (2254); Spurlock Mining, LLC (2899); Triad Mining, LLC (7713); and Triad Trucking, LLC (6112). The location of the Debtors' service address in these chapter 11 cases is 3228 Summit Square Place, Suite 180, Lexington, Kentucky 40509.

**TABLE OF CONTENTS**

	<b>Page</b>
<b>INTRODUCTION .....</b>	<b>1</b>
<b>ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES.....</b>	<b>1</b>
A. <i>Defined Terms</i> .....	1
B. <i>Rules of Interpretation</i> .....	12
C. <i>Computation of Time</i> .....	13
D. <i>Governing Law</i> .....	13
E. <i>Reference to Monetary Figures</i> .....	13
F. <i>Reference to the Debtors or the Reorganized Debtors</i> .....	13
G. <i>Controlling Document</i> .....	13
<b>ARTICLE II. ADMINISTRATIVE AND PRIORITY CLAIMS.....</b>	<b>13</b>
A. <i>DIP Claims</i> .....	13
B. <i>Administrative Claims</i> .....	14
C. <i>Professional Fee Claims</i> .....	15
D. <i>Priority Tax Claims</i> .....	16
<b>ARTICLE III. CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS.....</b>	<b>16</b>
A. <i>Classification of Claims and Interests</i> .....	16
B. <i>Treatment of Classes of Claims and Interests</i> .....	17
C. <i>Special Provision Governing Unimpaired Claims</i> .....	21
D. <i>Elimination of Vacant Classes</i> .....	21
E. <i>Voting Classes; Presumed Acceptance by Non-Voting Classes</i> .....	21
F. <i>Subordinated Claims</i> .....	22
G. <i>Intercompany Interests</i> .....	22
H. <i>Controversy Concerning Impairment</i> .....	22
I. <i>Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code</i> .....	22
<b>ARTICLE IV. MEANS FOR IMPLEMENTATION OF THE PLAN .....</b>	<b>22</b>
A. <i>General Settlement of Claims and Interests</i> .....	22
B. <i>Restructuring Transactions</i> .....	22
C. <i>Sources of Consideration for Plan Distributions</i> .....	23
D. <i>Shareholders Agreement</i> .....	25
E. <i>Potter Settlement</i> .....	25
F. <i>Vendor Agreements</i> .....	25
G. <i>Exemption from Registration Requirements</i> .....	25
H. <i>Corporate Existence</i> .....	26
I. <i>Corporate Action</i> .....	26
J. <i>Vesting of Assets in the Reorganized Debtors</i> .....	26
K. <i>Cancellation of Notes, Instruments, Certificates, and Other Documents</i> .....	26
L. <i>Effectuating Documents; Further Transactions</i> .....	27
M. <i>Exemptions from Certain Taxes and Fees</i> .....	27
N. <i>New Organizational Documents</i> .....	28
O. <i>Directors and Officers</i> .....	28
P. <i>Management Incentive Plan</i> .....	29
Q. <i>Preservation of Causes of Action</i> .....	29
<b>ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....</b>	<b>29</b>
A. <i>Assumption of Executory Contracts and Unexpired Leases</i> .....	29
B. <i>Claims Based on Rejection of Executory Contracts or Unexpired Leases</i> .....	30
C. <i>Cure of Defaults and Objections to Cure and Assumption</i> .....	30

D.	<i>Insurance Policies and Surety Bonds</i> .....	31
E.	<i>Indemnification Provisions</i> .....	32
F.	<i>Director, Officer, Manager, and Employee Liability Insurance</i> .....	32
G.	<i>Employee and Retiree Benefits</i> .....	32
H.	<i>Modifications, Amendments, Supplements, Restatements, or Other Agreements</i> .....	33
I.	<i>Reservation of Rights</i> .....	33
J.	<i>Nonoccurrence of Effective Date.</i> .....	33
K.	<i>Contracts and Leases Entered Into After the Petition Date</i> .....	33
<b>ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS .....</b>		<b>33</b>
A.	<i>Timing and Calculation of Amounts to Be Distributed</i> .....	33
B.	<i>Distributions on Account of Obligations of Multiple Debtors</i> .....	34
C.	<i>Distribution Agent</i> .....	34
D.	<i>Rights and Powers of Distribution Agent</i> .....	34
E.	<i>Delivery of Distributions</i> .....	34
F.	<i>Manner of Payment</i> .....	35
G.	<i>Compliance Matters</i> .....	35
H.	<i>No Postpetition or Default Interest on Claims</i> .....	35
I.	<i>Allocation Between Principal and Accrued Interest</i> .....	36
J.	<i>Setoffs and Recoupment</i> .....	36
K.	<i>Claims Paid or Payable by Third Parties</i> .....	36
<b>ARTICLE VII. PROCEDURES FOR RESOLVING DISPUTED CLAIMS AND INTERESTS.....</b>		<b>37</b>
A.	<i>Disputed Claims Process</i> .....	37
B.	<i>Claims Administration Responsibilities.</i> .....	37
C.	<i>Estimation of Claims and Interests</i> .....	37
D.	<i>Adjustment to Claims Without Objection</i> .....	38
E.	<i>No Distributions Pending Allowance</i> .....	38
F.	<i>Distributions After Allowance</i> .....	38
G.	<i>No Interest</i> .....	38
<b>ARTICLE VIII. SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS .....</b>		<b>38</b>
A.	<i>Compromise and Settlement of Claims, Interests, and Controversies</i> .....	38
B.	<i>Discharge of Claims</i> .....	38
C.	<i>Release of Liens</i> .....	39
D.	<i>Debtor Release</i> .....	39
E.	<i>Third-Party Release</i> .....	40
F.	<i>Exculpation</i> .....	40
G.	<i>Injunction</i> .....	41
H.	<i>Protection Against Discriminatory Treatment</i> .....	41
I.	<i>Recoupment</i> .....	41
J.	<i>Reimbursement or Contribution</i> .....	42
K.	<i>Term of Injunctions or Stays</i> .....	42
L.	<i>Document Retention</i> .....	42
<b>ARTICLE IX. CONDITIONS PRECEDENT TO THE EFFECTIVE DATE.....</b>		<b>42</b>
A.	<i>Conditions Precedent to the Effective Date.</i> .....	42
B.	<i>Waiver of Conditions Precedent</i> .....	43
C.	<i>Substantial Consummation</i> .....	43
D.	<i>Effect of Non-Occurrence of Conditions to Consummation</i> .....	43
<b>ARTICLE X. MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN.....</b>		<b>43</b>
A.	<i>Modification of Plan</i> .....	43
B.	<i>Effect of Confirmation on Modifications</i> .....	43
C.	<i>Revocation or Withdrawal of Plan</i> .....	44

**ARTICLE XI. RETENTION OF JURISDICTION ..... 44**

**ARTICLE XII. MISCELLANEOUS PROVISIONS ..... 45**

A. *Immediate Binding Effect*..... 45

B. *Additional Documents*..... 46

C. *Statutory Fees* ..... 46

D. *Payment of Certain Fees and Expenses* ..... 46

E. *Reservation of Rights* ..... 46

F. *Certain Governmental Matters.* ..... 46

G. *Successors and Assigns* ..... 47

H. *Service of Documents*..... 47

I. *Entire Agreement* ..... 50

J. *Plan Supplement Exhibits* ..... 50

K. *Non-Severability* ..... 50

L. *Votes Solicited in Good Faith* ..... 50

M. *Waiver or Estoppel*..... 50

N. *Closing of Chapter 11 Cases*..... 50

## INTRODUCTION

Blackhawk Mining LLC and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (each a “Debtor” and, collectively, the “Debtors”) propose this joint plan of reorganization (the “Plan”) for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined shall have the meanings set forth in Article I.A of the Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Interests pursuant to the Bankruptcy Code. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in Article III of the Plan shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors’ history, business, properties and operations, projections, risk factors, a summary and analysis of this Plan, and certain related matters.

**ALL HOLDERS OF CLAIMS AND INTERESTS ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY, PARTICULARLY HOLDERS OF CLAIMS AND INTERESTS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN.**

### ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES

#### A. *Defined Terms*

1. “*Ad Hoc Group of First Lien Lenders*” means the group of certain Holders of First Lien Term Loan Claims represented by Shearman & Sterling LLP.

2. “*Administrative Claim*” means a Claim for costs and expenses of administration of the Chapter 11 Cases pursuant to sections 503(b), 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 until and including the Effective Date of preserving the Estates and operating the Debtors’ businesses; and (b) Allowed Professional Fee Claims.

3. “*Affiliate*” has the meaning set forth in section 101(2) of the Bankruptcy Code as if such Entity was a debtor in a case under the Bankruptcy Code.

4. “*Allowed*” means with respect to any Claim or Interest, except as otherwise provided in the Plan: (a) a Claim that either (i) is not Disputed or (ii) has been allowed by a Final Order; (b) a Claim that is allowed, compromised, settled, or otherwise resolved (i) pursuant to the terms of the Plan, (ii) in any stipulation that is approved by the Bankruptcy Court by a Final Order, or (iii) pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection herewith; (c) a Claim relating to a rejected Executory Contract or Unexpired Lease that either (i) is not a Disputed Claim or (ii) has been allowed by a Final Order; or (d) a Claim or Interest as to which a Proof of Claim or Proof of Interest, as applicable, has been timely filed and as to which no objection has been filed.

5. “*Assumed Executory Contracts and Unexpired Leases*” means those Executory Contracts and Unexpired Leases to be assumed by the applicable Reorganized Debtors, as set forth on the Assumed Executory Contract and Unexpired Lease List.

6. “*Assumed Executory Contract and Unexpired Lease List*” means the list, as determined by the Debtors or the Reorganized Debtors, as applicable, of Executory Contracts and Unexpired Leases (with proposed cure amounts) that will be assumed by the Reorganized Debtors, which list shall be included in the Plan Supplement.

7. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

8. “*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over the Chapter 11 Cases, including, to the extent of the withdrawal of the reference under 28 U.S.C. § 157, the United States District Court for the District of Delaware.

9. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, as applicable to the Chapter 11 Cases and the general, local, and chambers rules of the Bankruptcy Court, as now in effect or hereafter amended.

10. “*Blackhawk*” means Blackhawk Mining LLC, a Kentucky limited liability company.

11. “*Blackhawk Operating Agreement*” means that certain Fifth Amended and Restated Operating Agreement of Blackhawk, dated as of December 15, 2017, as amended, modified, or supplemented from time to time in accordance with its terms.

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

13. “*Cash*” or “*\$*” means the legal tender of the United States of America or the equivalent thereof, including bank deposits, checks, and cash equivalents, as applicable.

14. “*Causes of Action*” means any claims, interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, Liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any state or foreign law fraudulent transfer or similar claim.

15. “*CEO Director*” means the Chief Executive Officer of Reorganized Blackhawk.

16. “*Chapter 11 Cases*” means the procedurally consolidated cases filed or to be filed (as applicable) for the Debtors in the Bankruptcy Court under chapter 11 of the Bankruptcy Code.

17. “*Claim*” means any claim, as defined in section 101(5) of the Bankruptcy Code, against any of the Debtors, whether or not assessed or Allowed.

18. “*Claims Register*” means the official register of Claims against and Interests in the Debtors maintained by the Solicitation Agent.

19. “*Class*” means a category of Holders of Claims or Interests under section 1122(a) of the Bankruptcy Code.

20. “*Class A Blackhawk Interests*” means the Class A Units in Blackhawk, as defined in the Blackhawk Operating Agreement.

21. “*Class B Blackhawk Interests*” means the Class B Units in Blackhawk, as defined in the Blackhawk Operating Agreement.

22. “*Class C Blackhawk Interests*” means the Class C Units in Blackhawk, as defined in the Blackhawk Operating Agreement.

23. “*Confirmation*” means entry of the Confirmation Order by the Bankruptcy Court on the docket of the Chapter 11 Cases.

24. “*Confirmation Date*” means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

25. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to Bankruptcy Rule 3020(b)(2) and section 1128 of the Bankruptcy Code, including any adjournments thereof, at which the Bankruptcy Court will consider confirmation of the Plan.

26. “*Confirmation Objection Deadline*” means the date that is at least five (5) Business Days prior to the date first set by the Bankruptcy Court for the Confirmation Hearing.

27. “*Confirmation Order*” means the order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code and approving the Disclosure Statement.

28. “*Consenting Parties*” means, collectively, the Consenting First Lien Term Loan Lenders, the Consenting Second Lien Term Loan Lenders, and the Potter Group Entities.

29. “*Consenting First Lien Term Loan Lenders*” means, collectively, the Consenting First Lien Lenders as defined in the RSA.

30. “*Consenting Second Lien Term Loan Lenders*” means, collectively, the Consenting Second Lien Lenders as defined in RSA.

31. “*Consummation*” means the occurrence of the Effective Date.

32. “*Contingent DIP ABL Obligations*” means all of the Debtors’ obligations under the DIP ABL Agreement and the DIP Order that are contingent and/or unliquidated as of the Effective Date, other than DIP ABL Claims that are paid in Full in Cash as of the Effective Date and contingent indemnification obligations as to which a claim has been asserted as of the Effective Date.

33. “*Contingent DIP Term Obligations*” means all of the Debtors’ obligations under the DIP Term Agreement and the DIP Order that are contingent and/or unliquidated as of the Effective Date, other than DIP Term Claims that are paid in Full in Cash as of the Effective Date and contingent indemnification obligations as to which a Claim has been asserted as of the Effective Date.

34. “*Contingent First Lien Term Loan Obligations*” means all of the Debtors’ obligations under the First Lien Term Loan Agreement that are contingent and/or unliquidated as of the Effective Date, other than First Lien Term Loan Claims that are paid in Full in Cash as of the Effective Date and contingent indemnification obligations as to which a Claim has been asserted as of the Effective Date.

35. “*Contingent Prepetition ABL Obligations*” means all of the Debtors’ obligations under the Prepetition ABL Credit Agreement that are contingent and/or unliquidated as of the Effective Date, other than the Obligations (defined thereunder) that are paid in Full in Cash pursuant to the ABL Discharge (as defined in the DIP Order) and contingent indemnification obligations as to which a Claim has been asserted as of the Effective Date.

36. “*Contingent Second Lien Term Loan Obligations*” means all of the Debtors’ obligations under the Second Lien Term Loan Agreement that are contingent and/or unliquidated as of the Effective Date, other than Second Lien Term Loan Claims that are paid in Full in Cash as of the Effective Date and contingent indemnification obligations as to which a Claim has been asserted as of the Effective Date.

37. “*Cure Claim*” means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor’s defaults under an Executory Contract or an Unexpired Lease assumed by such Debtor under



section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

38. “*D&O Liability Insurance Policies*” means all insurance policies (including any “tail policy”) maintained by the Debtors as of the Petition Date for liabilities against any of the Debtors’ current or former directors, managers, and officers.

39. “*Debtor Intercompany Claim*” means any Claim held by a Debtor against another Debtor.

40. “*Debtor Release*” means the release given on behalf of the Debtors and their Estates to the Released Parties as set forth in Article VIII.D of the Plan.

41. “*DIP ABL Agent*” means MidCap Funding IV Trust, solely in its capacity as administrative agent and collateral agent under the DIP ABL Facility, together with its respective successors and assigns solely in such capacity.

42. “*DIP ABL Agreement*” means that certain senior secured super-priority debtor-in-possession credit agreement by and among the Debtors, as borrowers and/or guarantors, the DIP ABL Agent, and the lenders party thereto, including any and all notes, instruments, and any other document delivered pursuant thereto or entered into in connection therewith, in each case as amended, modified, or supplemented from time to time.

43. “*DIP ABL Claim*” means any Claim arising under the DIP ABL Agreement, including all Claims for any fees and expenses of the DIP ABL Agent and the DIP ABL Lenders thereunder.

44. “*DIP ABL Facility*” means that certain debtor-in-possession asset-based credit facility available pursuant to the terms and conditions of DIP ABL Agreement in the aggregate principal amount of up to \$90 million.

45. “*DIP ABL Lenders*” means, collectively, the banks, financial institutions, and other lenders party to the DIP ABL Agreement from time to time, each solely in their capacity as such.

46. “*DIP Agents*” means, together, the DIP ABL Agent and the DIP Term Agent.

47. “*DIP Claims*” means, together, the DIP ABL Claims and the DIP Term Claims.

48. “*DIP Facilities*” means, together, the DIP ABL Facility and DIP Term Facility.

49. “*DIP Lenders*” means, together, the DIP ABL Lenders and the DIP Term Lenders.

50. “*DIP Order*” means, collectively, the interim and final orders entered by the Bankruptcy Court authorizing the Debtors to enter into the DIP ABL Agreement and the DIP Term Agreement.

51. “*DIP Term Agent*” means Cantor Fitzgerald Securities, in its capacity as administrative agent and collateral agent under the DIP Term Facility, together with its respective successors and assigns solely in such capacity.

52. “*DIP Term Agreement*” means that certain senior secured super-priority debtor-in-possession credit agreement by and among the Debtors, as borrowers and/or guarantors, the DIP Term Agent, as administrative agent, and the lenders party thereto, any and all notes, instruments, and any other document delivered pursuant thereto or entered into in connection therewith, in each case as amended, modified, or supplemented from time to time.

53. “*DIP Term Claim*” means any Claim arising under the DIP Term Agreement, including any Claims for fees and expenses of the DIP Term Agent and DIP Term Lenders thereunder.

54. “*DIP Term Facility*” means that certain debtor-in-possession financing facility, available pursuant to the terms and conditions of the DIP Term Agreement in the aggregate principal amount of up to \$150 million, consisting of up to \$50 million in New Money DIP Loans and up to \$100 million in Roll-Up DIP Loans.

55. “*DIP Term Lenders*” means, collectively, the banks, financial institutions, and other lenders party to the DIP Term Agreement, from time to time, each solely in their capacity as such.

56. “*Disclosure Statement*” means the disclosure statement for the Plan, including all exhibits and schedules thereto, to be approved by the Confirmation Order.

57. “*Disputed*” means, with respect to any Claim or Interest, any Claim or Interest, or any portion thereof, (a) to the extent neither Allowed nor disallowed under the Plan or a Final Order nor deemed Allowed under sections 502, 503, or 1111 of the Bankruptcy Code, or (b) for which a Proof of Claim or Proof of Interest or a motion for payment has been timely filed with the Bankruptcy Court, to the extent the Debtors or any other party in interest has interposed a timely objection or request for estimation in accordance with the Plan, the Bankruptcy Code, or the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order; *provided, however*, that in no event shall a Claim that is deemed Allowed pursuant to this Plan be a Disputed Claim.

58. “*Distribution Agent*” means, as applicable, the Reorganized Debtors or any Entity the Reorganized Debtors select to make or to facilitate distributions in accordance with the Plan, *provided* that the Second Lien Term Loan Agent shall be the Distribution Agent for the Second Lien Term Loan Claims in accordance with the Second Lien Term Loan Agreement.

59. “*Distribution Record Date*” means the date for determining which Holders of Allowed Claims and Interests are eligible to receive distributions pursuant to the Plan, which date shall be the Effective Date.

60. “*Effective Date*” means the date that is the first Business Day after the Confirmation Date on which all conditions precedent to the occurrence of the Effective Date set forth in Article IX.A of the Plan have been satisfied or waived in accordance with Article IX.B of the Plan.

61. “*Entity*” has the meaning set forth in section 101(15) of the Bankruptcy Code.

62. “*Estate*” means the estate of any Debtor created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the applicable Debtor’s Chapter 11 Case.

63. “*Exculpated Party*” means, collectively, and in each case in its capacity as such: (a) each of the Debtors; (b) each of the Reorganized Debtors; (c) any statutory committees appointed in the Chapter 11 Cases and each of their respective members; and (d) with respect to each of the foregoing in clauses (a) through (c), such Entity and its current and former Affiliates, and such Entity’s and its current and former Affiliates’ current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

64. “*Executory Contract*” means a contract or lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

65. “*Exit ABL Agent*” means MidCap Funding IV Trust or its designated Affiliate, in its capacity as agent under the Exit ABL Facility Documents, together with its successors, assigns, or any replacement agent appointed pursuant to the terms of the Exit ABL Facility Documents.

66. “*Exit ABL Facility*” means a senior secured asset-based revolving credit facility in an amount up to \$90 million, which shall be consistent with the Exit ABL Facility Documents.

67. “*Exit ABL Facility Agreement*” means that certain credit and security agreement, dated as of the Effective Date, by and among the Reorganized Debtors and the Exit ABL Facility Secured Parties, and which shall be included in the Plan Supplement.

68. “*Exit ABL Facility Documents*” means, collectively, the Exit ABL Facility Agreement and any and all other agreements, documents, and instruments delivered or entered into in connection therewith, including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents.

69. “*Exit ABL Facility Secured Parties*” means the lenders under the Exit ABL Facility, including the banks, financial institutions, institutional investors, or other entities serving as agents, arrangers, book runners, and/or letter of credit issuers thereto, each solely in their capacity as such.

70. “*FCC*” means the Federal Communications Commission.

71. “*First Lien Term Loan Agent*” means Cantor Fitzgerald Securities, and its predecessors thereto prior to the Petition Date, each solely in its capacity as administrative agent and collateral agent under the First Lien Term Loan Facility.

72. “*First Lien Term Loan Agreement*” means that certain credit agreement, dated as of February 17, 2017, as amended, supplemented, or modified from time to time, by and among the Debtors as borrowers or guarantors, the First Lien Term Loan Lenders, and the First Lien Term Loan Agent, as administrative agent.

73. “*First Lien Term Loan Claim*” means all Claims against any Debtor arising under, derived from, or based upon the First Lien Term Loan Agreement.

74. “*First Lien Term Loan Facility*” means that certain prepetition first lien secured term loan credit facility provided for under the First Lien Term Loan Agreement in the original aggregate principal amount of \$660,000,000 between certain of the Debtors as obligors or guarantors and the First Lien Term Loan Lenders.

75. “*First Lien Term Loan Lenders*” means, collectively, the banks, financial institutions, and other lenders party to the First Lien Term Loan Agreement from time to time, each solely in their capacity as such.

76. “*Final Decree*” means the decree contemplated under Bankruptcy Rule 3022.

77. “*Final Order*” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, modified, or amended, is not subject to any pending stay and as to which the time to reasonable appeal, move for reargument, reconsideration, or rehearing, or seek certiorari has expired and no appeal, motion for reargument, reconsideration, or rehearing or petition for certiorari has been timely taken or filed, or as to which any appeal that has been taken, motion for reargument, reconsideration, or rehearing that has been granted or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the new trial, reargument, reconsideration, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; *provided* that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure or any comparable Bankruptcy Rule may be filed relating to such order or judgment shall not cause such order or judgment to not be a Final Order.

78. “*General Unsecured Claim*” means any Claim that is not secured and is not a Contingent DIP ABL Obligation, a Contingent DIP Term Obligation, a Contingent Prepetition ABL Obligation, a Contingent First Lien Term Loan Obligation, a Contingent Second Lien Term Loan Obligation, a DIP Claim, an Administrative Claim (including, for the avoidance of doubt, a Professional Fee Claim), an Other Secured Claim, a Priority Tax Claim, an Other Priority Claim, a First Lien Term Loan Claim, a Second Lien Term Loan Claim, a Debtor Intercompany Claim, a Non-Debtor Intercompany Claim, or a Section 510(b) Claim.

79. “*Governmental Unit*” has the meaning set forth in section 101(27) of the Bankruptcy Code.

80. “*Holder*” means an Entity holding a Claim or an Interest, or, if applicable, an Entity receiving or retaining Interests in Blackhawk, the New First Lien Loan, or the New Common Stock, as applicable.

81. “*Impaired*” means, with respect to any Class of Claims or Interests, a Claim or an Interest that is not Unimpaired.

82. “*Indemnification Provisions*” means each of the Debtors’ indemnification provisions in place immediately prior to the Effective Date whether in the Debtors’ bylaws, certificates of incorporation, other formation documents, board resolutions, or contracts for the current and former directors, officers, managers, employees, attorneys, other professionals, and agents and such current and former directors, officers, and managers’ respective Affiliates.

83. “*Intercompany Interest*” means an Interest held by a Debtor or an Affiliate of a Debtor.

84. “*Interest*” means any common stock, limited liability company interest, equity security (as defined in section 101(16) of the Bankruptcy Code), equity, ownership, profit interests, unit, or share in a Debtor, including all issued, unissued, authorized, or outstanding shares of capital stock of the Debtors and any other rights, options, warrants, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable or exchangeable securities or other agreements, arrangements or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in any Debtor.

85. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

86. “*Knighthead*” means Knighthead Capital Management, LLC, a Delaware limited liability company.

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

88. “*Management Incentive Plan*” means the management incentive plan to be implemented with respect to Reorganized Blackhawk (and/or its subsidiaries) after the Effective Date, which plan shall reserve the Management Incentive Plan Equity for distributions to its participants on the terms and conditions to be determined by the Reorganized Blackhawk Board.

89. “*Management Incentive Plan Equity*” means synthetic equity interests to be issued pursuant to the Management Incentive Plan, which shall economically represent up to 6 percent of the value of the New Common Stock in Reorganized Blackhawk as of the Effective Date, on a fully diluted basis.

90. “*New Common Stock*” means the common stock, limited liability company membership units, or functional equivalent thereof of Reorganized Blackhawk to be issued on the Effective Date.

91. “*New First Lien Loan*” means that certain term loan facility in an aggregate principal amount of \$375,000,000 issued pursuant to the New First Lien Loan Documents.

92. “*New First Lien Loan Agent*” means Cantor Fitzgerald Securities, solely in its capacity as administrative agent and collateral agent under the New First Lien Loan Documents, together with its successors, assigns, or any replacement administrative agent appointed pursuant to the terms of the New First Lien Loan Documents.

93. “*New First Lien Loan Agreement*” means that certain credit and security agreement, dated as of the Effective Date, by and among the Reorganized Debtors, the New First Lien Loan Agent, and the lenders party thereto, which shall be included in the Plan Supplement.

94. “*New First Lien Loan Documents*” means, collectively, the New First Lien Loan Agreement and any and all other agreements, documents, and instruments delivered or to be entered into in connection therewith,

including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents, which shall be in form and substance consistent with the RSA.

95. “*New Money DIP Claim*” means any Claim arising under, derived from, or based upon the New Money DIP Loans.

96. “*New Money DIP Loans*” means up to \$50,000,000 in new money delayed draw term loans provided by the DIP Term Lenders pursuant to the DIP Term Agreement and DIP Order.

97. “*New Organizational Documents*” means the form of certificate or articles of incorporation, bylaws, or such other applicable formation documents (if any) of Reorganized Blackhawk, each of which shall be included in the Plan Supplement and materially consistent with the RSA, and in form and substance reasonably acceptable to the DIP ABL Agent or Exit ABL Agent in all material respects.

98. “*Non-Debtor Intercompany Claim*” means any Claim held by a non-Debtor Affiliate of the Debtors against a Debtor.

99. “*NRC*” means the United States Nuclear Regulatory Commission.

100. “*Other Priority Claim*” means any Claim other than an Administrative Claim or a Priority Tax Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

101. “*Other Secured Claim*” means any Secured Claim, other than a DIP Claim, a Contingent Prepetition ABL Obligation, a First Lien Term Loan Claim and Second Lien Term Loan Claim.

102. “*Patriot Chapter 11 Cases*” means the jointly administered chapter 11 cases captioned *In re Patriot Coal Corporation*, Case No. 15-32450 (KLP), in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division.

103. “*Patriot Plan*” means the chapter 11 plan confirmed in the Patriot Chapter 11 Cases, as may be amended, supplemented, or modified from time to time in accordance with its terms.

104. “*Patriot Trust*” means the PCC Liquidating Trust established in connection with the Patriot Chapter 11 Cases.

105. “*Patriot Trust Debtor Affiliates*” means the debtors in the Patriot Chapter 11 Cases.

106. “*Patriot Trust RSA*” means that certain Restructuring Support Agreement, dated as of July 15, 2019, among Blackhawk and the trustee of the Patriot Trust.

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

108. “*Petition Date*” means the date on which each of the Debtors commence the Chapter 11 Cases.

109. “*Plan Supplement*” means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan to be filed by the Debtors as may be amended, supplemented, altered, or modified from time to time on the terms set forth herein, and which includes: (a) the New Organizational Documents; (b) the New First Lien Loan Agreement; (c) the Exit ABL Facility Agreement; (d) the Shareholders Agreement; (e) Restructuring Steps Memorandum; (f) the identity of the members of the Reorganized Blackhawk Board and the officers of Reorganized Blackhawk; (g) the Rejected Executory Contract and Unexpired Lease List; (h) the Assumed Executory Contract and Unexpired Lease List; (i) the schedule of retained Causes of Action; and (j) any other necessary documentation related to the Restructuring Transactions, each of which shall be in form and substance consistent with the RSA.

110. “*Potter Group Entity*” means, respectively, and in each case, in such capacity, those Entities owned or controlled by John Mitchell Potter that are counterparties to the Potter Group Vendor Contracts with the Debtors.

111. “*Potter Group Vendor Contracts*” means the “Affiliate Contracts” as defined in the Restructuring Term Sheet attached thereto as Schedule 1.

112. “*Potter Consulting Services Agreement*” means that certain consulting services agreement, dated as of July 15, 2019, by and between Blackhawk and John Mitchell Potter.

113. “*Potter Settlement*” means that certain settlement set forth in Article IV.E hereof.

114. “*Prepetition ABL Agent*” means MidCap Funding IV Trust, and its predecessors thereto prior to the Petition Date, each solely in its capacity as administrative agent under the Prepetition ABL Facility.

115. “*Prepetition ABL Credit Agreement*” means that certain credit agreement, dated as of September 6, 2017, as amended, supplemented, or modified from time to time, by and among the Debtors as borrowers or guarantors, the Prepetition ABL Lenders, and the Prepetition ABL Agent.

116. “*Prepetition ABL Facility*” means that certain prepetition asset-based credit facility with aggregate commitments of \$85,000,000 under the Prepetition ABL Credit Agreement between certain of the Debtors as obligors or guarantors and the Prepetition ABL Lenders.

117. “*Prepetition ABL Lenders*” means, collectively, the banks, financial institutions, and other lenders party to the Prepetition ABL Credit Agreement from time to time, each solely in their capacity as such.

118. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

119. “*Pro Rata*” means the proportion that an Allowed Claim or an Allowed Interest in a particular Class bears to the aggregate amount of Allowed Claims or Allowed Interests in that Class.

120. “*Professional*” means an Entity retained in the Chapter 11 Cases pursuant to a Final Order in accordance with sections 327, 363, and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Effective Date pursuant to sections 327, 328, 329, 330, 331, or 363 of the Bankruptcy Code.

121. “*Professional Fee Claims*” means all Claims for accrued, contingent, and/or unpaid fees and expenses (including transaction and success fees) incurred by a Professional in the Chapter 11 Cases on or after the Petition Date and through and including the Confirmation Date that the Bankruptcy Court has not denied by Final Order. To the extent that the Bankruptcy Court or any higher court of competent jurisdiction denies or reduces by a Final Order any amount of a Professional’s fees or expenses, then those reduced or denied amounts shall no longer constitute Professional Fee Claims.

122. “*Professional Fee Escrow Account*” means an interest-bearing account funded by the Debtors with Cash on or before the Effective Date in an amount equal to the Professional Fee Escrow Amount, *provided* that the Cash funds in the Professional Fee Escrow Account shall be increased from Cash on hand at the Reorganized Debtors to the extent applications are filed after the Effective Date in excess of the amount of Cash funded into the escrow as of the Effective Date.

123. “*Professional Fee Escrow Amount*” means the aggregate amount of Professional Fee Claims and other unpaid fees and expenses Professionals estimate they have incurred or will incur in rendering services to the Debtors prior to and as of the Confirmation Date, which estimates Professionals shall deliver to the Debtors as set forth in Article II.C of the Plan.

124. “*Proof of Claim*” means a proof of Claim filed against any of the Debtors in the Chapter 11 Cases.

125. “*Proof of Interest*” means a proof of Interest filed in any of the Debtors in the Chapter 11 Cases.

126. “*Reinstate*,” “*Reinstated*,” or “*Reinstatement*” means with respect to Claims and Interests, that the Claim or Interest shall be rendered unimpaired in accordance with section 1124 of the Bankruptcy Code.

127. “*Rejected Executory Contract and Unexpired Lease List*” means the list, as determined by the Debtors or the Reorganized Debtors, as applicable, of Executory Contracts and Unexpired Leases that will be rejected by the Reorganized Debtors pursuant to the Plan, which list shall be included in the Plan Supplement.

128. “*Released Party*” means collectively, and in each case in its capacity as such: (a) each of the Debtors; (b) the Reorganized Debtors; (c) each of the First Lien Term Loan Lenders; (d) each of the Second Lien Term Loan Lenders; (e) the First Lien Term Loan Agent; (f) the Second Lien Term Loan Agent; (g) each of the Potter Group Entities; (h) each of the New First Lien Loan Lenders; (i) the New First Lien Loan Agent; (j) the Prepetition ABL Agent; (k) each of the Prepetition ABL Lenders; (l) the DIP ABL Agent; (m) each of the DIP ABL Lenders; (n) the DIP Term Agent; (o) each of the DIP Term Lenders; (p) the Patriot Trust and its trustee; (q) the Patriot Trust Debtor Affiliates; (r) all Holders of Class A Blackhawk Interests, Class B Blackhawk Interests, and Class C Blackhawk Interests, in each case that vote to accept the Plan; and (s) with respect to each of the foregoing entities in clauses (a) through (r), such Entity and its current and former Affiliates, and such Entities’ and their current and former Affiliates’ current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns, subsidiaries, managed accounts or funds, participants, and each of their respective current and former equity holders, officers, directors, managers, principals, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals; *provided*, the release in favor of the Potter Group Entities and John Mitchell Potter shall include and be effective as to all matters previously invoiced and paid between any of the Potter Group Entities and the Debtors as of the Petition Date but shall not apply to the continuing obligations between any of the Potter Group Entities and the Debtors under the terms of the agreements assumed by the Debtors; *provided, however*, that any Entity identified in the foregoing clauses (a) through (r) that opts out of the releases shall not be a “Released Party.”

129. “*Releasing Parties*” means, collectively, and in each case in its capacity as such: (a) each of the Debtors; (b) the Reorganized Debtors; (c) each of the Consenting Term Loan Lenders; (d) each of the Potter Group Entities; (e) each of the New First Lien Loan Lenders; (f) the New First Lien Loan Agent; (g) the Prepetition ABL Agent; (h) each of the Prepetition ABL Lenders; (i) the DIP ABL Agent; (j) each of the DIP ABL Lenders; (k) the DIP Term Agent; (l) each of the DIP Term Lenders; (m) the First Lien Term Loan Agent; (n) the Second Lien Term Loan Agent; (o) the Patriot Trust and its trustee; (p) the Patriot Trust Debtor Affiliates; (q) all Holders of Claims or Interests that vote to accept or are deemed to accept the Plan; (r) all Holders of Claims or Interests that vote to reject the Plan or do not vote to accept or reject the Plan but, in either case, do not affirmatively elect to “opt out” of being a releasing party by timely objecting to the Plan’s third-party release provisions; (s) all Holders of Claims or Interests that are deemed to reject the Plan that do not affirmatively elect to “opt out” of being a releasing party by timely objecting to the Plan’s third-party release provisions; (t) with respect to each of the Debtors, the Reorganized Debtors, and each of the foregoing entities in clauses (a) through (s), such Entity and its current and former Affiliates, and such Entities’ and their current and former Affiliates’ current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns, subsidiaries, managed accounts or funds, participants, and each of their respective current and former equity holders, officers, directors, managers, principals, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such collectively.

130. “*Reorganized Blackhawk*” means either (a) Blackhawk, or any successor or assign thereto, by merger, consolidation, reorganization, or otherwise, in the form of a corporation, limited liability company, partnership, or other form, as the case may be, on and after the Effective Date, or (b) a new corporation, limited liability company, or partnership that may be formed to, among other things, directly or indirectly acquire substantially all of the assets and/or stock of the Debtors and issue the New Common Stock to be distributed pursuant to the Plan.

131. “*Reorganized Blackhawk Board*” means the Board of Directors (or other applicable governing body) of Reorganized Blackhawk.

132. “*Reorganized Debtor*” means a Debtor, or any successor or assign thereto, by merger, consolidation, reorganization, or otherwise, in the form of a corporation, limited liability company, partnership, or other form, as the case may be, on and after the Effective Date, including Reorganized Blackhawk.

133. “*Required Consenting First Lien Lenders*” means the Required Consenting First Lien Lenders as defined in the RSA.

134. “*Required Consenting Parties*” means, collectively, the Required Consenting First Lien Lenders, the Required Consenting Second Lien Lenders, and the Potter Group Entities party to the RSA from time to time.

135. “*Required Consenting Second Lien Lenders*” means the Required Consenting Second Lien Lenders as defined in the RSA.

136. “*Required Consenting Term Lenders*” means the Required Consenting First Lien Lenders and the Required Consenting Second Lien Lenders.

137. “*Restructuring Steps Memorandum*” means the summary of transaction steps to complete the restructuring contemplated by the Plan, which shall be included in the Plan Supplement.

138. “*Restructuring Transactions*” means the transactions described in Article IV.B of the Plan.

139. “*Roll-Up DIP Claim*” means any Claim arising under, derived from, or based upon the Roll-Up DIP Loans.

140. “*Roll-Up DIP Loans*” means the \$100,000,000 of the First Lien Term Loan Claims rolled-up pursuant to the DIP Term Agreement and DIP Order.

141. “*RSA*” means that certain Restructuring Support Agreement, dated as of July 15, 2019, by and among the Debtors and the Consenting Parties, including all exhibits and attachments thereto, and as amended, restated, and supplemented from time to time in accordance with its terms.

142. “*SEC*” means the Securities and Exchange Commission.

143. “*Second Lien Term Loan Agent*” means Cortland Capital Market Services LLC, and its predecessors thereto prior to the Petition Date, each in its capacity as administrative agent under the Second Lien Term Loan Facility.

144. “*Second Lien Term Loan Agreement*” means that certain Credit Agreement, dated as of October 28, 2015, (as amended, supplemented, or modified from time to time) among certain of the Debtors as borrowers or guarantors and the Second Lien Term Loan Lenders.

145. “*Second Lien Term Loan Claim*” means all Claims against any Debtor arising under, derived from, or based upon the Second Lien Term Loan Agreement.

146. “*Second Lien Term Loan Facility*” means that certain prepetition second lien secured term loan credit facility provided for under the Second Lien Term Loan Agreement in the original aggregate principal amount of up to \$229,238,375.55 between certain of the Debtors as obligors or guarantors and the Second Lien Term Loan Lenders.

147. “*Second Lien Term Loan Lenders*” means, collectively, the banks, financial institutions, and other lenders party to the Second Lien Term Loan Agreement from time to time, each solely in their capacity as such.

148. “*Section 510(b) Claim*” means any Claim arising from: (a) rescission of a purchase or sale of a security of the Debtors or an Affiliate of the Debtors; (b) purchase or sale of such a security; or (c) reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.



149. “*Secured Claim*” means a Claim: (a) secured by a valid, perfected, and enforceable Lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

150. “*Securities Act*” means the Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, or any similar federal, state, or local law, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

151. “*Security*” has the meaning set forth in section 2(a)(1) of the Securities Act.

152. “*Shareholders Agreement*” means that certain shareholders agreement that will govern certain matters related to the governance of Reorganized Blackhawk and the New Common Stock, which shall be included in the Plan Supplement.

153. “*Solicitation Agent*” means Prime Clerk, LLC, the notice, claims, and solicitation agent retained by the Debtors for the Chapter 11 Cases.

154. “*Solus*” means Solus Alternative Asset Management LP, a New York limited partnership.

155. “*Term Loan Agents*” means the First Lien Term Loan Agent and the Second Lien Term Loan Agent.

156. “*Third-Party Release*” means the release given by each of the Releasing Parties to the Released Parties as set forth in Article VIII.E of the Plan.

157. “*Unexpired Lease*” means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

158. “*Unimpaired*” means a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

159. “*U.S. Trustee*” means the Office of the United States Trustee for the District of Delaware.

160. “*Vendor Agreements*” means, collectively, the promissory notes and similar agreements entered into by Blackhawk with certain of the Debtors’ vendors, setting forth the terms of the repayment for certain General Unsecured Claims that otherwise arose prior to the Petition Date.

#### *B. Rules of Interpretation*

For purposes of the Plan, except as otherwise provided in this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) unless otherwise specified, any reference in the Plan to an existing document, schedule, or exhibit, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (3) unless otherwise specified, all references in the Plan to “Articles” and “Sections” are references to Articles and Sections, respectively, hereof or hereto; (4) the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to any particular portion of the Plan; (5) any effectuating provisions may be interpreted by the Debtors (subject to the terms of the RSA) or the Reorganized Debtors in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; (6) 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; (7) unless otherwise specified in the Plan, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (8) any term used in capitalized form in the Plan that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (9) references to docket numbers of documents filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court’s CM/ECF system; (10) references to “Proofs of Claim,” “Holders of Claims,” “Disputed Claims,” and the like shall include “Proofs of Interest,” “Holders of Interests,” “Disputed Interests,” and the like as applicable; (11) references to

“shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers,” as applicable, as such terms are defined under the applicable state limited liability company laws; (12) the terms “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words “without limitation”; and (13) except as otherwise provided in the Plan, any reference to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter.

*C. Computation of Time*

Unless otherwise specifically stated in the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed in the Plan. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

*D. Governing Law*

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided, however*, that corporate governance matters relating to the Debtors or the Reorganized Debtors, as applicable, shall be governed by the laws of the state of incorporation or formation of the relevant Debtor or Reorganized Debtor, as applicable.

*E. Reference to Monetary Figures*

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

*F. Reference to the Debtors or the Reorganized Debtors*

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Reorganized Debtors mean the Debtors and the Reorganized Debtors, as applicable, to the extent the context requires.

*G. Controlling Document*

In the event of an inconsistency between the Plan, the RSA, and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the Plan Supplement shall control. In the event of any inconsistency between the Plan Supplement and the Confirmation Order, the Confirmation Order shall control.

**ARTICLE II.  
ADMINISTRATIVE AND PRIORITY 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 of the Plan.

*A. DIP Claims*

1. DIP ABL Claims

All DIP ABL Claims shall be deemed Allowed as of the Effective Date in an amount equal to (i) the principal amount outstanding under the DIP ABL Facility on such date, (ii) all interest accrued and unpaid thereon to the date of payment, (iii) all accrued and unpaid fees, expenses, and noncontingent indemnification obligations payable under the DIP ABL Agreement and the DIP Order, and (iv) all other DIP ABL Obligations as defined in the DIP ABL

Agreement other than Contingent DIP ABL Obligations. Except to the extent that a Holder of an Allowed DIP ABL Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed DIP ABL Claim, each such Allowed DIP ABL Claim shall receive on the Effective Date either: (i) payment in full in Cash of such Holder's Allowed DIP ABL Claim or (ii) at such Holder's election and agreement by the Debtors, such Holder's Pro Rata share of the Exit ABL Facility. All reasonable and documented unpaid fees and expenses of the DIP ABL Agent, including reasonable and documented fees, expenses, and costs of its advisors, shall be paid in Cash on the Effective Date. Contemporaneously with the foregoing receipt of payment in full in Cash or satisfaction through a Pro Rata share of the Exit ABL Facility of the Allowed DIP ABL Claims, except with respect to contingent obligations under the DIP ABL Agreement (which contingent obligations shall survive the Effective Date and shall continue to be governed by the DIP ABL Agreement as provided below), the DIP ABL Facility, the DIP ABL Agreement, and all related loan documents, shall be deemed cancelled, all Liens on property of the Debtors and the Reorganized Debtors arising out of or related to the DIP ABL Facility shall automatically terminate, and all collateral subject to such Liens shall be automatically released, in each case without further action by the DIP ABL Agent or the DIP ABL Lenders and all guarantees of the Debtors and Reorganized Debtors arising out of or related to the DIP ABL Claims shall be automatically discharged and released, in each case without further action by the DIP ABL Agent or the DIP ABL Lenders. The DIP ABL Agent and the DIP ABL Lenders shall take all actions to effectuate and confirm such termination, release, and discharge as reasonably requested by the Debtors or the Reorganized Debtors, as applicable.

## 2. DIP Term Claims

All DIP Term Claims shall be deemed Allowed as of the Effective Date in an amount equal to (i) the principal amount outstanding under the DIP Term Facility on such date, (ii) all interest accrued and unpaid thereon to the date of payment, (iii) all accrued and unpaid fees, expenses, and noncontingent indemnification obligations payable under the DIP Term Agreement and the DIP Order, and (iv) all other Obligations as defined in the DIP Term Agreement other than Contingent DIP Term Obligations. Except to the extent that a Holder of an Allowed DIP Term Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed DIP Term Claim, each such Allowed DIP Term Claim shall receive on the Effective Date such Holder's Pro Rata share of \$150,000,000 of the New First Lien Loan. All reasonable and documented unpaid fees and expenses of the DIP Term Agent, including reasonable and documented fees, expenses, and costs of its advisors, shall be paid in Cash on the Effective Date. Contemporaneously with the foregoing satisfaction, except with respect to contingent obligations under the DIP Term Agreement (which contingent obligations shall survive the Effective Date and shall continue to be governed by the DIP Term Agreement as provided below), the DIP Term Facility, the DIP Term Agreement, and all related loan documents shall be deemed cancelled, all Liens on property of the Debtors and the Reorganized Debtors arising out of or related to the DIP Term Facility shall automatically terminate, and all collateral subject to such Liens shall be automatically released, in each case without further action by the DIP Term Agent or the DIP Term Lenders and all guarantees of the Debtors and Reorganized Debtors arising out of or related to the DIP Term Claims shall be automatically discharged and released, in each case without further action by the DIP Term Agent or the DIP Term Lenders. The DIP Term Agent and the DIP Term Lenders shall take all actions to effectuate and confirm such termination, release, and discharge as reasonably requested by the Debtors or the Reorganized Debtors, as applicable.

### *B. Administrative Claims*

Unless otherwise agreed to by the Holders of an Allowed Administrative Claim and the Debtors (with the reasonable consent of the Required Consenting Parties), or the Reorganized Debtors, as applicable, each Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim in accordance with the following: (1) if an Administrative Claim is Allowed as of the Effective Date, on the Effective Date (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than sixty days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim without any further action by the Holders of such

Allowed Administrative Claim; or (4) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

C. *Professional Fee Claims*

1. Professional Fee Escrow Account

As soon as reasonably practicable after the Confirmation Date, and no later than one Business Day prior to the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and for no other Entities until all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. Such funds shall not be considered property of the Estates, the Debtors, or the Reorganized Debtors.

The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals by the Debtors or the Reorganized Debtors, as applicable, from the funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by an order of the Bankruptcy Court; *provided* that the Debtors' and the Reorganized Debtors' obligations to pay Allowed Professional Fee Claims shall not be limited nor be deemed limited to funds held in the Professional Fee Escrow Account. When all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court, any remaining funds held in the Professional Fee Escrow Account shall promptly be paid to the Reorganized Debtors without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

2. Final Fee Applications and Payment of Professional Fee Claims

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be filed no later than 45 days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior Bankruptcy Court orders. The Reorganized Debtors shall pay the amount of the Allowed Professional Fee Claims owing to the Professionals in Cash to such Professionals, including from funds held in the Professional Fee Escrow Account when such Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court.

3. Professional Fee Escrow Amount

The Professionals shall provide a reasonable and good-faith estimate of their fees and expenses incurred in rendering services to the Debtors before and as of the Effective Date projected to be outstanding as of the Effective Date, and shall deliver such estimate to the Debtors no later than five days before the anticipated Effective Date; *provided, however*, that such estimate shall not be considered an admission or limitation with respect to the fees and expenses of such Professional and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate a reasonable amount of unbilled fees and expenses of such Professional, taking into account any prior payments; *provided, however*, that such estimate shall not be binding or considered an admission with respect to the fees and expenses of such Professional. The total aggregate amount so estimated as of the Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account, *provided* that the Reorganized Debtors shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

4. Post-Confirmation Date Fees and Expenses.

From and after the Confirmation Date, the Debtors or Reorganized Debtors, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court,

pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Debtors or the Reorganized Debtors, as applicable. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

The Debtors and Reorganized Debtors, as applicable, shall pay, within ten business days after submission of a detailed invoice to the Debtors or Reorganized Debtors, as applicable, such reasonable claims for compensation or reimbursement of expenses incurred by the retained Professionals of the Debtors or the Reorganized Debtors, as applicable. If the Debtors or Reorganized Debtors, as applicable, dispute the reasonableness of any such invoice, the Debtors or Reorganized Debtors, as applicable, or the affected professional may submit such dispute to the Bankruptcy Court for a determination of the reasonableness of any such invoice, and the disputed portion of such invoice shall not be paid until the dispute is resolved.

*D. Priority Tax Claims*

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code and, for the avoidance of doubt, Holders of Allowed Priority Tax Claims will receive interest on such Allowed Priority Tax Claims after the Effective Date in accordance with sections 511 and 1129(a)(9)(C) of the Bankruptcy Code.

**ARTICLE III.  
CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS**

*A. Classification of Claims and Interests*

This Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in Article II of the Plan, all Claims and Interests are classified in the Classes set forth below in accordance with section 1122 of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The following chart represents the classification of Claims and Interests for each Debtor pursuant to the Plan:

<b>Class</b>	<b>Claim or Interest</b>	<b>Status</b>	<b>Voting Rights</b>
1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
3	First Lien Term Loan Claims	Impaired	Entitled to Vote
4	Second Lien Term Loan Claims	Impaired	Entitled to Vote
5	General Unsecured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
6	Debtor Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Deemed to Accept or Reject)

Class	Claim or Interest	Status	Voting Rights
7	Non-Debtor Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Deemed to Accept or Reject)
8	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
9	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Deemed to Accept or Reject)
10A	Class A Blackhawk Interests	Impaired	Entitled to Vote
10B	Class B Blackhawk Interests	Impaired	Entitled to Vote
10C	Class C Blackhawk Interests	Impaired	Entitled to Vote

*B. Treatment of Classes of Claims and Interests*

To the extent a Class contains Allowed Claims or Allowed Interests with respect to any Debtor, the classification of Allowed Claims and Allowed Interests is specified below.

1. Class 1 — Other Secured Claims

- (a) *Classification:* Class 1 consists of any Other Secured Claims.
- (b) *Treatment:* Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Secured Claim, each such Holder shall receive, at the option of the applicable Debtor(s), either:
  - (i) payment in full in Cash;
  - (ii) delivery of collateral securing any such Claim and payment of any interest required under section 506(b) of the Bankruptcy Code;
  - (iii) Reinstatement of such Allowed Other Secured Claim; or
  - (iv) such other treatment rendering its Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.
- (c) *Voting:* Class 1 is Unimpaired under the Plan. Holders of Allowed Other Secured Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Other Secured Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 — Other Priority Claims

- (a) *Classification:* Class 2 consists of any Other Priority Claims.
- (b) *Treatment:* Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Priority Claim, each such Holder shall receive, at the option of the applicable Debtor(s), either:
  - (i) payment in full in Cash; or

- (ii) such other treatment rendering its Allowed Other Priority Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.
  - (c) *Voting:* Class 2 is Unimpaired under the Plan. Holders of Allowed Other Priority Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan.
- 3. Class 3 — First Lien Term Loan Claims
  - (a) *Classification:* Class 3 consists of any First Lien Term Loan Claims against any Debtor.
  - (b) *Allowance:* On the Effective Date, First Lien Term Loan Claims shall be Allowed in the aggregate principal amount of \$538,974,437, plus any accrued but unpaid interest, fees, and other expenses arising under or in connection with the First Lien Term Loan Agreement.
  - (c) *Treatment:* Except to the extent that a Holder of an Allowed First Lien Term Loan Claim agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each First Lien Term Loan Claim, each Holder of an Allowed First Lien Term Loan Claim shall receive its Pro Rata share of:
    - (i) \$225,000,000 of the New First Lien Loan; and
    - (ii) 71% of the New Common Stock in Reorganized Blackhawk.
  - (d) *Voting:* Class 3 is Impaired under the Plan. Holders of Allowed First Lien Term Loan Claims are entitled to vote to accept or reject the Plan.
- 4. Class 4 — Second Lien Term Loan Claims
  - (a) *Classification:* Class 4 consists of any Second Lien Term Loan Claims against any Debtor.
  - (b) *Allowance:* On the Effective Date, Second Lien Term Loan Claims shall be Allowed in the aggregate principal amount of \$318,307,228, plus any accrued but unpaid interest, fees, and other expenses arising under or in connection with the Second Lien Term Loan Agreement.
  - (c) *Treatment:* Except to the extent that a Holder of an Allowed Second Lien Term Loan Claim agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Second Lien Term Loan Claim, each Holder of an Allowed Second Lien Term Loan Claim shall receive its Pro Rata share of 29% of the New Common Stock in Reorganized Blackhawk.
  - (d) *Voting:* Class 4 is Impaired under the Plan. Holders of Allowed Second Lien Term Loan Claims are entitled to vote to accept or reject the Plan.
  - (e) Distributions to each Holder of an Allowed Second Lien Term Loan Claim shall be subject to the terms of the Second Lien Term Loan Agreement and the rights of the Second Lien Term Loan Agent as set forth thereunder and in Article IV.K hereof.
- 5. Class 5 — General Unsecured Claims
  - (a) *Classification:* Class 5 consists of any General Unsecured Claims against any Debtor.

- (b) *Treatment:* Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to a less favorable treatment of its Allowed Claim (including pursuant to a Vendor Agreement or the Patriot Trust RSA), in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim, each Holder of an Allowed General Unsecured Claim shall receive either:
  - (i) payment in Cash in an amount equal to such Allowed General Unsecured Claim in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Unsecured Claim; or
  - (ii) payment in Cash, including interest, if applicable, as required by contract or applicable law, in an amount equal to such Allowed General Unsecured Claim, upon the later of (A) the Effective Date, (B) the date on which such General Unsecured Claim becomes an Allowed Claim, or (C) such other date as may be ordered by the Bankruptcy Court. Notwithstanding anything in the foregoing to the contrary, the Allowed Claim of the Patriot Trust shall be paid pursuant to the terms of the Patriot Trust RSA.
- (c) *Voting:* Class 5 is Unimpaired under the Plan. Holders of Allowed General Unsecured Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed General Unsecured Claims are not entitled to vote to accept or reject the Plan.

6. Class 6 — Debtor Intercompany Claims

- (a) *Classification:* Class 6 consists of any Debtor Intercompany Claims.
- (b) *Treatment:* Except to the extent otherwise provided in the Restructuring Steps Memorandum, each Allowed Debtor Intercompany Claim shall, at the option of the applicable Debtors, either on or after the Effective Date, be:
  - (i) Reinstated;
  - (ii) converted to equity; or
  - (iii) extinguished, compromised, addressed, cancelled, or settled, without any distribution on account of such Claims.
- (c) *Voting:* Holders of Allowed Debtor Intercompany Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) or rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Holders of Allowed Debtor Intercompany Claims are not entitled to vote to accept or reject the Plan.

7. Class 7 — Non-Debtor Intercompany Claims

- (a) *Classification:* Class 7 consists of any Non-Debtor Intercompany Claims.
- (b) *Treatment:* Except to the extent otherwise provided in the Restructuring Steps Memorandum, each Allowed Non-Debtor Intercompany Claim shall, at the option of the applicable Debtors, be:
  - (i) Reinstated;
  - (ii) converted to equity; or



- (iii) extinguished, compromised, addressed, cancelled, or settled, without any distribution on account of such Claims.
  - (c) *Voting:* Holders of Allowed Non-Debtor Intercompany Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) or rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Holders of Allowed Non-Debtor Intercompany Claims are not entitled to vote to accept or reject the Plan.
- 8. Class 8 — Section 510(b) Claims
  - (a) *Classification:* Class 8 consists of any Section 510(b) Claims.
  - (b) *Allowance:* Notwithstanding anything to the contrary in the Plan, a Section 510(b) Claim, if any such Claim exists, may only become Allowed by Final Order of the Bankruptcy Court. The Debtors are not aware of any asserted Class 8 Claim and believe that no Section 510(b) Claims exist.
  - (c) *Treatment:* Allowed Section 510(b) Claims, if any, shall be discharged, cancelled, released, and extinguished as of the Effective Date, and shall be of no further force or effect, and Holders of Allowed Section 510(b) Claims shall not receive any distribution on account of such Allowed Section 510(b) Claims.
  - (d) *Voting:* Class 8 is Impaired. Holders, if any, of Allowed Section 510(b) Claims are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Holders, if any, of Allowed Section 510(b) Claims are not entitled to vote to accept or reject the Plan.
- 9. Class 9 — Intercompany Interests
  - (a) *Classification:* Class 9 consists of all Interests in the Debtors other than Blackhawk.
  - (b) *Treatment:* On the Effective Date, Intercompany Interests shall be, at the option of the Debtors, either:
    - (i) Reinstated in exchange for the Debtors' and the Reorganized Debtors' agreement under the Plan to make certain distributions to the Holders of Allowed Claims; or
    - (ii) discharged, cancelled, released, and extinguished and of no further force or effect without any distribution on account of such Interests.

For the avoidance of doubt, any Interest in non-Debtor subsidiaries owned by a Debtor shall continue to be owned by the applicable Reorganized Debtor unless otherwise provided in the Restructuring Steps Memorandum.

  - (c) *Voting:* Holders of Intercompany Interests are conclusively deemed to have accepted the Plan pursuant to section 1126(f) or rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Holders of Intercompany Interests are not entitled to vote to accept or reject the Plan.
- 10. Class 10A — Class A Blackhawk Interests
  - (a) *Classification:* Class 10A consists of all Class A Blackhawk Interests.
  - (b) *Treatment:* On the Effective Date, all Class A Blackhawk Interests shall be discharged, cancelled, released, and extinguished as of the Effective Date, and shall be of no further

force or effect, and Holders of Class A Blackhawk Interests will not receive any distribution on account of such Interests. Holders of Class A Blackhawk Interests that vote to accept the Plan shall be a “Released Party” for purposes of the Debtor Release and the Third-Party Release.

- (c) *Voting:* Class 10A is Impaired under the Plan. Holders of Class A Blackhawk Interests are entitled to vote to accept or reject the Plan.

11. Class 10B — Class B Blackhawk Interests

- (a) *Classification:* Class 10B consists of all Class B Blackhawk Interests.
- (b) *Treatment:* On the Effective Date, all Class B Blackhawk Interests shall be discharged, cancelled, released, and extinguished as of the Effective Date, and shall be of no further force or effect, and Holders of Class B Blackhawk Interests will not receive any distribution on account of such Interests. Holders of Class B Blackhawk Interests that vote to accept the Plan shall be a “Released Party” for purposes of the Debtor Release and the Third-Party Release.
- (c) *Voting:* Class 10B is Impaired under the Plan. Holders of Class B Blackhawk Interests are entitled to vote to accept or reject the Plan.

12. Class 10C — Class C Blackhawk Interests

- (a) *Classification:* Class 10C consists of all Class C Blackhawk Interests.
- (b) *Treatment:* On the Effective Date, all Class C Blackhawk Interests shall be discharged, cancelled, released, and extinguished as of the Effective Date, and shall be of no further force or effect, and Holders of Class C Blackhawk Interests will not receive any distribution on account of such Interests. Holders of Class C Blackhawk Interests that vote to accept the Plan shall be a “Released Party” for purposes of the Debtor Release and the Third-Party Release.
- (c) *Voting:* Class 10C is Impaired under the Plan. Holders of Class C Blackhawk Interests are entitled to vote to accept or reject the Plan.

*C. Special Provision Governing Unimpaired Claims*

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors’ or the Reorganized Debtors’ rights regarding any Unimpaired Claim, including all rights regarding legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

*D. Elimination of Vacant Classes*

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

*E. Voting Classes; Presumed Acceptance by Non-Voting Classes*

If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Debtors shall request the Bankruptcy Court to deem the Plan accepted by the Holders of such Claims or Interests in such Class.

*F. Subordinated Claims*

The allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtors reserve the right to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

*G. Intercompany Interests*

To the extent Reinstated under the Plan, distributions on account of Intercompany Interests are not being received by Holders of such Intercompany Interests on account of their Intercompany Interests, but for the purposes of administrative convenience and in exchange for the Debtors' and Reorganized Debtors' agreement under the Plan to provide management services to certain other Debtors and Reorganized Debtors, to use certain funds and assets as set forth in the Plan to make certain distributions and satisfy certain obligations of certain other Debtors and Reorganized Debtors to the holders of certain Allowed Claims. For the avoidance of doubt, any Interest in non-Debtor subsidiaries owned by a Debtor shall continue to be owned by the applicable Reorganized Debtor.

*H. Controversy Concerning Impairment*

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

*I. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code*

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by one or more of the Classes entitled to vote pursuant to Article III.B of the Plan. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X hereof to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims to render such Class of Claims Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules or to withdraw the Plan as to such Debtor; *provided* that this Article III.I shall not limit the respective rights of each party to the RSA or the DIP ABL Agent and DIP ABL Lenders under the DIP ABL Agreement.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THE PLAN**

*A. General Settlement of Claims and Interests*

Unless otherwise set forth in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan, including with respect to issues related to the value of the Debtors' unencumbered property.

*B. Restructuring Transactions*

On and after the Confirmation Date, the Debtors or Reorganized Debtors, as applicable, shall take all actions set forth in the Restructuring Steps Memorandum and may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan that are consistent with and pursuant to the terms and conditions of the Plan and the RSA, which transactions may include, as applicable:

(a) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, reorganization, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms to which the applicable parties agree; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, formation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution or other certificates or documentation for other transactions as described in clause (a), pursuant to applicable state law; (d) the execution and delivery of the Shareholders Agreement and the New Organizational Documents and any certificates or articles of incorporation, bylaws, or such other applicable formation documents (if any) of each Reorganized Debtor; (e) the execution and delivery of the New First Lien Loan Documents and Exit ABL Facility Documents (in both cases, including all actions to be taken, undertakings to be made, and obligations to be incurred and fees and expenses to be paid by the Debtors and/or the Reorganized Debtors, as applicable); (f) the execution and delivery of the New Organizational Documents (including all actions to be taken, undertakings to be made, and obligations to be incurred and fees and expenses to be paid by the Debtors and/or the Reorganized Debtors, as applicable), and the issuance, distribution, reservation, or dilution, as applicable, of the New Common Stock, as set forth herein; (g) the adoption of the Management Incentive Plan and the issuance and reservation of the Management Incentive Plan Equity to the participants in the Management Incentive Plan on the terms and conditions set by the Reorganized Blackhawk Board after the Effective Date; (h) all transactions necessary to provide for the purchase of substantially all of the assets or Interests of any of the Debtors by one or more Entities to be wholly owned by Reorganized Blackhawk, which purchase may be structured as a taxable transaction for United States federal income tax purposes; and (i) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law in connection with the Restructuring Transactions.

*C. Sources of Consideration for Plan Distributions*

The Debtors shall fund distributions under the Plan, as applicable, with: (1) the New First Lien Loan; (2) the New Common Stock; (3) the Exit ABL Facility; and (4) the Debtors' encumbered Cash on hand. Each distribution and issuance referred to in Article VI of 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 or other documents evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance. The issuance, distribution, or authorization, as applicable, of certain securities in connection with the Plan, including the New First Lien Loan and the New Common Stock, will be exempt from SEC registration, as described more fully in Article IV.G below.

1. Issuance and Distribution of the New First Lien Loan

On the Effective Date, the Reorganized Debtors shall (a) execute and deliver the New First Lien Loan Documents and such documents shall become effective in accordance with their terms, and (b) issue (i) \$225,000,000 of the New First Lien Loan to the Holders of the First Lien Term Loan Claims on the terms and conditions set forth in the New First Lien Loan Documents and (ii) \$150,000,000 of the New First Lien Loan to the Holders of the DIP Term Claims on the terms and conditions set forth in the New First Lien Loan Documents, to collectively total \$375,000,000. On and after the Effective Date, the New First Lien Loan Documents shall constitute legal, valid, and binding obligations of the Reorganized Debtors and be enforceable in accordance with their respective terms. The terms and conditions of the New First Lien Loan Documents shall bind Reorganized Blackhawk and each other Entity that enters into such New First Lien Loan Documents as a guarantor. Any Entity's entry into the New First Lien Loan Agreement shall be deemed as its agreement to the terms of such New First Lien Loan Documents, as amended or modified from time to time following the Effective Date in accordance with its terms.

Confirmation shall be deemed approval of the New First Lien Loan Documents (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations and guarantees to be incurred and fees and expenses paid in connection therewith), and, to the extent not approved by the Bankruptcy Court previously, the Reorganized Debtors will be authorized to execute and deliver those documents necessary or appropriate to obtain the New First Lien Loan, including the New First Lien Loan Documents, without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or vote, consent,

authorization, or approval of any Person, subject to such modifications as the Debtors or Reorganized Debtors may deem to be necessary to consummate the New First Lien Loan.

On the Effective Date, immediately upon receipt of the payments required in Article II.A hereof, all of the claims, liens, and security interests to be granted in accordance with the terms of the New First Lien Loan Documents (a) shall be legal, binding, and enforceable liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the New First Lien Loan Documents, (b) shall be deemed automatically attached and perfected on the Effective Date, subject only to such other liens and security interests as may be permitted under the New First Lien Loan Documents, and (c) subject to contractual subordination pursuant to the intercreditor agreement between the Exit ABL Agent and the New First Lien Loan Agent, shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law.

## 2. Exit ABL Facility

On the Effective Date, the Reorganized Debtors shall execute and deliver the Exit ABL Facility Documents and such documents shall become effective in accordance with their terms. The Exit ABL Facility shall be a \$90 million secured revolving credit facility. If the ABL Discharge (as defined in the DIP Order) has not occurred prior to the Effective Date, the Reorganized Debtors shall provide for the indefeasible payment of the Prepetition ABL Debt (as defined in the DIP Order) outstanding as of the Effective Date in full in Cash, including interest and fees through the date of repayment (at the non-default contract rate), on or as soon as practicable after the Effective Date, with the proceeds of the Exit ABL Facility or otherwise.

On and after the Effective Date, the Exit ABL Facility Documents shall constitute legal, valid, and binding obligations of the Reorganized Debtors and be enforceable in accordance with their respective terms. The terms and conditions of the Exit ABL Facility Agreement shall bind Reorganized Blackhawk and each other Entity that enters into such Exit ABL Facility Agreement as a guarantor. Any Entity's entry into the Exit ABL Facility Agreement shall be deemed as its agreement to the terms of such Exit ABL Facility Agreement, as amended or modified from time to time following the Effective Date in accordance with its terms.

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

On the Effective Date, immediately upon receipt of the payments required in Article II.A hereof, all of the claims, liens, and security interests to be granted in accordance with the terms of the Exit ABL Facility Documents (a) shall be legal, binding, and enforceable liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit ABL Facility Documents, (b) shall be deemed automatically attached and perfected on the Effective Date, subject only to such liens and security interests as may be permitted under the Exit ABL Facility Documents, and (c) subject to contractual subordination pursuant to the intercreditor agreement between the Exit ABL Agent and the New First Lien Loan Agent, shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law.

## 3. Issuance and Distribution of the New Common Stock

On the Effective Date, the New Common Stock shall be issued and distributed to the Entities entitled to receive the New Common Stock pursuant to the Plan in accordance with the Restructuring Steps Memorandum. The

issuance of New Common Stock shall be authorized without the need for any further corporate action and without any action by the Holders of Claims or other parties in interest. All of the New Common Stock issued under the Plan shall be duly authorized, validly issued, fully paid, and non-assessable.

Each distribution and issuance of the New Common Stock under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution, issuance, and/or dilution, as applicable, and by the terms and conditions of the instruments evidencing or relating to such distribution, issuance, and/or dilution, as applicable, including the Shareholders Agreement and the New Organizational Documents, which terms and conditions shall bind each Entity receiving such distribution of the New Common Stock. Any Entity's acceptance of New Common Stock shall be deemed as its agreement to the New Organizational Documents and the Shareholders Agreement, as the same may be amended or modified from time to time following the Effective Date in accordance with their terms. The New Common Stock will not be registered on any exchange as of the Effective Date and shall not meet the eligibility requirements of the Depository Trust Company.

#### 4. Cash on Hand

The Debtors or Reorganized Debtors, as applicable, shall use Cash on hand to fund distributions to certain Holders of Claims, including the payment of Allowed General Unsecured Claims as set forth in Article III of the Plan.

#### D. *Shareholders Agreement*

On the Effective Date, Reorganized Blackhawk shall enter into and deliver the Shareholders Agreement, in substantially the form included in the Plan Supplement, to each Holder of New Common Stock, and such parties shall be bound thereby, in each case without the need for execution by any party thereto other than Reorganized Blackhawk.

#### E. *Potter Settlement*

On the Effective Date, the Debtors shall assume the Potter Consulting Services Agreement, and John Mitchell Potter and the Reorganized Debtors shall perform thereunder pursuant to the terms and conditions of the Potter Consulting Services Agreement. On and after the Effective Date, the Potter Group Entities that are party to the Potter Group Vendor Contracts agree to continue to satisfy their obligations under the Potter Group Vendor Contracts, as amended on the terms described in the RSA. In exchange for performing under the Potter Consulting Services Agreement and the modifications to the Potter Group Vendor Contracts set forth in the RSA, John Mitchell Potter shall receive (a) \$500,000 in Cash on the Effective Date, and (b) reimbursement for his reasonable attorney's fees incurred in connection with the negotiation and execution of the Potter Consulting Services Agreement up to a maximum of \$60,000.

#### F. *Vendor Agreements*

On the Effective Date, the Debtors shall assume the Vendor Agreements, and the applicable vendors and the Reorganized Debtors shall perform thereunder pursuant to the terms and conditions of the applicable Vendor Agreement.

#### G. *Exemption from Registration Requirements*

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of the New Common Stock pursuant to the Plan is exempt from, among other things, the registration requirements of Section 5 of the Securities Act and any other applicable U.S. state or local law requiring registration prior to the offering, issuance, distribution, or sale of Securities. The shares of New Common Stock to be issued under the Plan (a) are not "restricted securities" as defined in Rule 144(a)(3) under the Securities Act, and (b) subject to the terms of the Shareholders Agreement, are freely tradable and transferable by any initial recipient thereof that (i) is not an "affiliate" of the Debtors as defined in Rule 144(a)(1) under the Securities Act, (ii) has not been such an "affiliate" within 90 days of such transfer, and (iii) is not an entity that is an "underwriter" as defined in subsection (b) of Section 1145 of the Bankruptcy Code.

*H. Corporate Existence*

Except as otherwise provided in the Plan or the Plan Supplement, each Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and bylaws (or other formation documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws (or other formation documents) are amended under the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state, provincial, or federal law).

*I. Corporate Action*

On or before the Effective Date, as applicable, all actions contemplated under the Plan or the Plan Supplement shall be deemed authorized and approved in all respects, including: (1) adoption or assumption, as applicable, of the agreements with existing management; (2) selection of the directors, managers, and officers for the Reorganized Debtors; (3) implementation of the Restructuring Transactions; (4) the applicable Reorganized Debtors' entry into the Exit ABL Facility Documents and New First Lien Loan Documents; and (5) all other actions contemplated under the Plan (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors, as applicable, and any corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Reorganized Debtors, as applicable. On or (as applicable) prior to the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Reorganized Debtors, including the Exit ABL Facility Documents, the New First Lien Loan Documents and the Shareholders Agreement, and any and all other agreements, documents, securities, and instruments relating to the foregoing. The authorizations and approvals contemplated by this Article IV.I shall be effective notwithstanding any requirements under non-bankruptcy law.

*J. Vesting of Assets in the Reorganized Debtors*

Except as otherwise provided in the Plan or the Plan Supplement, or in any agreement, instrument, or other document incorporated in the Plan, on the Effective Date, all property in each Debtor's Estate, all Causes of Action, and any property acquired by any of the Debtors under the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances (except for Liens securing obligations under the Exit ABL Facility Documents and the New First Lien Loan Documents and the Liens securing obligations on account of Other Secured Claims that are Reinstated pursuant to the Plan, if any). On and after the Effective Date, except as otherwise provided in the Plan, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

*K. Cancellation of Notes, Instruments, Certificates, and Other Documents*

On the Effective Date, except to the extent otherwise provided in the Plan, all notes, instruments, certificates, and other documents evidencing Claims shall be cancelled, and the obligations of the Debtors or the Reorganized Debtors and any non-Debtor Affiliates thereunder or in any way related thereto shall be discharged and deemed satisfied in full, and the Term Loan Agents shall be released from all duties thereunder; *provided, however*, that notwithstanding Confirmation or the occurrence of the Effective Date, any credit document or agreement that governs the rights of the Holder of a Claim or Interest shall continue in effect solely for purposes of (1) allowing Holders of Allowed Claims to receive distributions under the Plan, (2) allowing and preserving the rights of the Term Loan Agents and DIP Agents to make distributions pursuant to the Plan, (3) preserving the Term Loan Agents', the Prepetition ABL Agent's, and the DIP Agents' rights to compensation and indemnification as against any money or property distributable to the Prepetition ABL Lenders, Holders of First Lien Term Loan Claims, Second Lien Term Loan Claims, DIP ABL Claims, and DIP Term Claims, including permitting the Term Loan Agents and DIP Agents

to maintain, enforce, and exercise its charging liens against such distributions, (4) preserving all rights, including rights of enforcement, of the Term Loan Agents, the Prepetition ABL Agent, and DIP Agents against any person other than a Released Party (including the Debtors), including with respect to indemnification or contribution from the Prepetition ABL Lenders, Holders of the First Lien Term Loan Claims, Second Lien Term Loan Claims, DIP ABL Claims, and DIP Term Claims pursuant and subject to the terms of the Prepetition ABL Credit Agreement, the First Lien Term Loan Agreement, the Second Lien Term Loan Agreement, the DIP ABL Agreement, and the DIP Term Agreement as in effect on the Effective Date, (5) permitting the Term Loan Agents, the Prepetition ABL Agent, and DIP Agents to enforce any obligation (if any) owed to the Term Loan Agents, the Prepetition ABL Agent, or DIP Agents under the Plan, (6) permitting the Prepetition ABL Agent, the Term Loan Agents, and the DIP Agents to appear in the Chapter 11 Cases or in any proceeding in the Bankruptcy Court or any other court, (7) permitting the DIP Agents, the DIP ABL Lenders, the DIP Term Lenders, the Prepetition ABL Agent, the Prepetition ABL Lenders, the First Lien Term Loan Agent, the First Lien Term Loan Lenders, the Second Lien Term Loan Agent, and the Second Lien Term Loan Lenders to assert any rights with respect to the Contingent DIP Term Obligations, the Contingent DIP ABL Obligations, the Contingent Prepetition ABL Obligations, the Contingent First Lien Term Loan Obligations or the Contingent Second Lien Term Loan Obligations, as applicable, and (8) permitting the Term Loan Agents, the Prepetition ABL Agent, and the DIP Agents to perform any functions that are necessary to effectuate the foregoing; *provided, further, however*, that (a) the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan, or result in any expense or liability to the Debtors or Reorganized Debtors, as applicable, except as expressly provided for in the Plan and (b) except as otherwise provided in the Plan, the terms and provisions of the Plan shall not modify any existing contract or agreement that would in any way be inconsistent with distributions under the Plan. The Term Loan Agents, the Prepetition ABL Agent, and the DIP Agents shall be discharged and shall have no further obligation or liability except as provided in the Plan and Confirmation Order, and after the performance by the Term Loan Agents, the Prepetition ABL Agent, and the DIP Agents and their representatives and professionals of any obligations and duties required under or related to the Plan or Confirmation Order, the Term Loan Agents, the Prepetition ABL Agent, and the DIP Agents shall be relieved of and released from any obligations and duties arising thereunder. The fees, expenses, and costs of the Term Loan Agents, the Prepetition ABL Agent, and the DIP Agents, including fees, expenses, and costs of its professionals incurred after the Effective Date in connection with the First Lien Term Loan Agreement, the Second Lien Term Loan Agreement, the Prepetition ABL Agreement, the DIP Term Agreement, and the DIP ABL Agreement, as applicable, and reasonable and documented costs and expenses associated with effectuating distributions pursuant to the Plan will be paid by the Reorganized Debtors in the ordinary course.

*L. Effectuating Documents; Further Transactions*

On and after the Effective Date, the Reorganized Debtors, and the officers and members of the boards of directors and managers thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, the RSA, the Exit ABL Facility Documents, the New First Lien Loan Documents, the New Organizational Documents, and the Securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

*M. Exemptions from Certain Taxes and Fees*

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Reorganized Debtors, including the Exit ABL Facility, the New First Lien Loan, and the New Common Stock; (b) the Restructuring Transactions; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; (e) the grant of collateral as security for any or all of the Exit ABL Facility and the New First Lien Loan; or (f) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code



filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

*N. New Organizational Documents*

The New Organizational Documents shall, among other things: (1) contain the terms and minority protections consistent with the RSA; (2) authorize the issuance, distribution, and reservation of the New Common Stock to the Entities entitled to receive such Interests under the Plan; and (3) pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code, prohibit the issuance of non-voting equity Securities.

On or immediately before the Effective Date, Blackhawk or Reorganized Blackhawk, as applicable, will file its New Organizational Documents with the applicable Secretary of State and/or other applicable authorities in its state of incorporation or formation in accordance with the applicable laws of their respective state of incorporation or formation, to the extent required for such New Organizational Documents to become effective. After the Effective Date, Reorganized Blackhawk may amend and restate its formation, organizational, and constituent documents as permitted by the laws of its respective jurisdiction of formation and the terms of such documents.

*O. Directors and Officers*

On the Effective Date, the Reorganized Blackhawk Board shall consist of five persons and will include: (1) the CEO Director; (2) one director selected by Knighthead; (3) one director selected by Solus; (4) one independent director selected by Knighthead and Solus, subject to the consent, not to be unreasonably withheld, of the majority of a three-member committee consisting of members of the Ad Hoc Group of First Lien Lenders, which three-member committee shall be selected by members of the Ad Hoc Group of First Lien Lenders holding at least 50.01% of the First Lien Term Loan Claims held by such group; and (5) one independent director acceptable to a group consisting of each Holder (other than Knighthead and Solus) that will be entitled to receive under the Plan at least 10% of the New Common Stock issued on the Effective Date, with the consent of Knighthead and Solus (such consent not to be unreasonably withheld), as set forth in the RSA. On the Effective Date, the terms of the current members of the Blackhawk board of directors shall expire, and the Reorganized Blackhawk Board will include those directors set forth in the list of directors of the Reorganized Debtors included in the Plan Supplement; *provided* that, as set forth in the RSA, prior to the selection of a Chief Executive Officer of Reorganized Blackhawk by the Reorganized Blackhawk Board to replace John Mitchell Potter, the seat of the CEO Director shall be filled by a member of the executive team selected by a majority of the remaining members of the Reorganized Blackhawk Board until a new individual becomes the Chief Executive Officer of Reorganized Blackhawk.

On the Effective Date, the officers and overall management structure of Reorganized Blackhawk, and all officers and management decisions with respect to Reorganized Blackhawk (and/or any of its direct or indirect subsidiaries), compensation arrangements, and affiliate transactions shall only be subject to the approval of the Reorganized Blackhawk Board.

From and after the Effective Date, each director, officer, or manager of the Reorganized Debtors shall be appointed and serve pursuant to the terms of their respective charters and bylaws or other formation and constituent documents, including the Shareholders Agreement and the New Organizational Documents, and applicable laws of the respective Reorganized Debtor's jurisdiction of formation. To the extent that any such director or officer of the Reorganized Debtors is an "insider" under the Bankruptcy Code, the Debtors will disclose the nature of any compensation to be paid to such director or officer.

*P. Management Incentive Plan*

On or after the Effective Date, the Reorganized Debtors shall adopt and implement the Management Incentive Plan, which shall be funded with the Management Incentive Plan Equity. The Reorganized Blackhawk Board shall be authorized to institute such Management Incentive Plan, enact and enter into related policies and agreements, and distribute the Management Incentive Plan Equity to participants based on the terms and conditions determined by the Reorganized Blackhawk Board. For the avoidance of doubt, the terms and conditions of the Management Incentive Plan (including any related agreements, policies, programs, other arrangements, and the Management Incentive Plan participants) shall be determined solely by the Reorganized Blackhawk Board after the Effective Date.

*Q. Preservation of Causes of Action*

In accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article VIII of the Plan, which shall be deemed released and waived by the Debtors and Reorganized Debtors as of the Effective Date. For the avoidance of doubt, the retained Causes of Action shall not include any Causes of Action: (1) of any kind or nature with respect to the Patriot Trust, its trustee or the Patriot Trust Debtor Affiliates, or (2) expressly contemplated to be released under the RSA or the Potter Consulting Services Agreement, so long as the parties to such agreements do not opt out of the releases contained in Article VIII of the Plan.

The Reorganized Debtors may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors. **No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against it. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity.** Unless any Cause of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order of the Bankruptcy Court, the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, and, therefore no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

**ARTICLE V.  
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

*A. Assumption of Executory Contracts and Unexpired Leases*

On the Effective Date, except as otherwise provided in the Plan or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, all Executory Contracts and Unexpired Leases shall be deemed assumed, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code, and regardless of whether such Executory Contract or Unexpired Lease is identified on the Assumed Executory Contract and Unexpired Lease List, unless such Executory Contract and Unexpired Lease: (1) was assumed or rejected previously by the Debtors; (2) previously expired or terminated pursuant to its own terms; (3) is the subject of a motion to reject filed on or before the Effective Date; or (4) is identified on the Rejected Executory Contract and Unexpired Lease List.

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the assumptions, assumption and assignment, or rejections, as applicable, of such Executory Contracts or Unexpired Leases as set forth in the Plan, the Assumed Executory Contract and Unexpired Lease List, and the Rejected Executory Contract and Unexpired Leases List, as applicable, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated, assumptions, assumptions and assignments, or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed

pursuant to the Plan or by Bankruptcy Court order but not assigned to a third party before the Effective Date shall re-vest in and be fully enforceable by the applicable contracting Reorganized Debtor in accordance with its terms, except as such terms may have been modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption under applicable federal law. Any motions to assume Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order. Notwithstanding anything to the contrary in the Plan, the Debtors, or the Reorganized Debtors, as applicable, reserve the right to alter, amend, modify, or supplement the Rejected Executory Contract and Unexpired Lease List and the Assumed Executory Contract and Unexpired Lease List at any time through and including thirty days after the Effective Date.

To the maximum extent permitted by law, to the extent that any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned pursuant to the Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption or assumption and assignment of such Executory Contract or Unexpired Lease (including any “change of control” provision), then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto.

*B. Claims Based on Rejection of Executory Contracts or Unexpired Leases*

Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be filed with the Solicitation Agent and served on the Reorganized Debtors no later than thirty days after the effective date of such rejection.

**Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not filed with the Solicitation Agent within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Reorganized Debtors, the Estates, or their property, without the need for any objection by the Debtors or Reorganized Debtors, or further notice to, action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, and be subject to the permanent injunction set forth in Article VIII.G of the Plan, notwithstanding anything in a Proof of Claim to the contrary.**

All Claims arising from the rejection by any Debtor of any Executory Contract or Unexpired Lease pursuant to section 365 of the Bankruptcy Code shall be treated as a General Unsecured Claim pursuant to Article III.B of the Plan and may be objected to in accordance with the provisions of Article VII of the Plan and the applicable provisions of the Bankruptcy Code and Bankruptcy Rules.

*C. Cure of Defaults and Objections to Cure and Assumption*

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 or in the ordinary course of business, subject to the limitation described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree.

Within seven calendar days before the Confirmation Objection Deadline, the Debtors shall provide notices of proposed cure amounts to counterparties to Executory Contracts and Unexpired Leases, which shall include a description of the procedures for objecting to assumption thereof based on the proposed cure amounts or the Reorganized Debtors’ ability to provide “adequate assurance of future performance thereunder” (within the meaning of section 365 of the Bankruptcy Code). 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 counsel to the Debtors, counsel to the Consenting Term Lenders, counsel to the DIP ABL Agent, the Solicitation Agent, and the U.S. Trustee no later than 5:00 p.m., prevailing Eastern Time, on August 20, 2019. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or cure amount will be deemed to have assented to such assumption or cure amount.

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 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 either (a) the entry of a Final Order or orders resolving the dispute and approving the assumption or (b) the settlement of the dispute between the parties which may be entered into without further order of the Bankruptcy Court.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any 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. For the avoidance of doubt, assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not override or otherwise release any indemnification obligations in such Executory Contract or Unexpired Lease. **Any Proof 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.**

*D. Insurance Policies and Surety Bonds*

Each of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as Executory Contracts under the Plan. Unless otherwise provided in the Plan, on the Effective Date, the Debtors shall be deemed to have assumed all insurance policies, as well as any agreements, documents, and instruments relating to such insurance policies or coverage of all insured Claims. Except as set forth in Article V.F of the Plan, nothing in this Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, or any other order of the Bankruptcy Court (including any other provision that purports to be preemptory or supervening), (1) alters, modifies, or otherwise amends the terms and conditions of (or the coverage provided by) any of such insurance policies or (2) alters or modifies the duty, if any, that the insurers or third party administrators pay claims covered by such insurance policies and their right to seek payment or reimbursement from the Debtors (or after the Effective Date, the Reorganized Debtors) or draw on any collateral or security therefor. For the avoidance of doubt, insurers and third party administrators shall not need to nor be required to file or serve a cure objection or a request, application, claim, Proof of Claim, or motion for payment and shall not be subject to any claims bar date or similar deadline governing cure amounts or Claims.

The automatic stay pursuant to section 362(a) of the Bankruptcy Code and the permanent injunction set forth in Article VIII.G, if and to the extent applicable, shall be deemed lifted without further order of the Bankruptcy Court, solely to permit: (1) claimants with valid direct action claims under applicable non-bankruptcy law to proceed with their claims; (2) any insurer of the Debtors to administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of the Bankruptcy Court, (i) all claims (x) where a claimant asserts a direct claim against any insurer of the Debtors under applicable law or (y) that are subject to an order of the Bankruptcy Court granting the applicable claimant relief from the automatic stay or the injunction set forth in Article VIII.G to proceed with such claim and (ii) all costs in relation to the foregoing; and (3) subject to the terms of the Debtors' agreement with any insurer of the Debtors and/or applicable non-bankruptcy law, any insurer of the Debtors to (i) cancel any policies under the Debtors' agreement with such insurer, and (ii) take other actions relating thereto.

On the Effective Date, (1) all of the Debtors' obligations and commitments to any surety bond providers shall be deemed reaffirmed by the Reorganized Debtors, (2) surety bonds and related indemnification and collateral agreements entered into by any Debtor will be vested and performed by the applicable Reorganized Debtor and will survive and remain unaffected by entry of the Confirmation Order, (3) the Reorganized Debtors shall be authorized to enter into new surety bond agreements and related indemnification and collateral agreements, or to modify any such existing agreements, in the ordinary course of business, and (4) all liens and security interests, if any, granted pursuant to or in connection with the Debtors' surety bond program shall remain valid, binding, perfected, enforceable liens and security interests with the priorities established in respect thereof under applicable non-bankruptcy law, and shall remain unaffected by the Plan and the Confirmation Order. The applicable Reorganized Debtors will continue to pay all premiums and other amounts due, including loss adjustment expenses, on the existing surety bonds as they become due prior to the execution and issuance of new surety bonds. Surety bond providers shall have the discretion to replace (or issue name-change riders with respect to) any existing surety bonds or related general agreements of indemnity

with new surety bonds and related general agreements of indemnity on the same terms and conditions provided in the applicable existing surety bonds or related general agreements of indemnity. For the avoidance of doubt, nothing in this Plan shall affect in any way any surety's rights against any non-debtor, or any non-debtor's rights against a surety, including under the Debtors' surety bonds and the Debtors' obligations arising therefrom.

*E. Indemnification Provisions*

On and as of the Effective Date, the Indemnification Provisions will be assumed and irrevocable and will survive the effectiveness of the Plan, and the Reorganized Debtors' governance documents will provide for the indemnification, defense, reimbursement, exculpation, and/or limitation of liability of, and advancement of fees and expenses to the Debtors' and the Reorganized Debtors' current and former directors, officers, employees, and agents to the fullest extent permitted by law and at least to the same extent as the organizational documents of each of the respective Debtors on the Petition Date, against any claims or Causes of Action whether direct or derivative, liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted. None of the Reorganized Debtors will amend and/or restate their respective governance documents before or after the Effective Date to terminate or adversely affect any of the Reorganized Debtors' obligations to provide such indemnification rights or such directors', officers', employees', or agents' indemnification rights.

On and as of the Effective Date, any of the Debtors' indemnification obligations with respect to any contract or agreement that is the subject of or related to any litigation against the Debtors or Reorganized Debtors, as applicable, shall be assumed by the Reorganized Debtors and otherwise remain unaffected by the Chapter 11 Cases.

*F. Director, Officer, Manager, and Employee Liability Insurance*

On or before the Effective Date, the Debtors, on behalf of the Reorganized Debtors, shall be authorized to and shall purchase and maintain directors, officers, managers, and employee liability tail coverage for the six (6)-year period following the Effective Date for the benefit of the Debtors' current and former directors, managers, officers, and employees on terms no less favorable to such persons than their existing coverage under the D&O Liability Insurance Policies with available aggregate limits of liability upon the Effective Date of no less than the aggregate limit of liability under the existing D&O Liability Insurance Policies.

After the Effective Date, none of the Debtors or the Reorganized Debtors shall terminate or otherwise reduce the coverage under any such policies (including, if applicable, any "tail policy") with respect to conduct occurring as of the Effective Date, and all officers, directors, managers, and employees of the Debtors who served in such capacity at any time before the Effective Date shall be entitled to the full benefits of any such policy for the full six-year term of such policy regardless of whether such officers, directors, managers, or employees remain in such positions after the Effective Date.

On and after the Effective Date, each of the Reorganized Debtors shall be authorized to purchase a directors' and officers' liability insurance policy for the benefit of their respective directors, members, trustees, officers, and managers in the ordinary course of business.

*G. Employee and Retiree Benefits*

Except as otherwise provided in the Plan, on and after the Effective Date, subject to any Final Order and, without limiting any authority provided to the Reorganized Blackhawk Board under the Debtors' respective formation and constituent documents, the Reorganized Debtors shall: (1) amend, adopt, assume, and/or honor in the ordinary course of business any contracts, agreements, policies, programs, and plans, in accordance with their respective terms, for, among other things, compensation, including any incentive plans, retention plans, health care benefits, disability benefits, deferred compensation benefits, savings, severance benefits, retirement benefits, welfare benefits, workers' compensation insurance, and accidental death and dismemberment insurance for the directors, officers, and employees of any of the Debtors who served in such capacity from and after the Petition Date; 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 Petition Date and not otherwise paid pursuant to a Bankruptcy Court order; *provided* that the consummation of the transactions contemplated in the Plan shall not constitute a "change in control" with respect to any of the foregoing

arrangements. Notwithstanding the foregoing, pursuant to section 1129(a)(13) of the Bankruptcy Code, from and after the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law.

*H. Modifications, Amendments, Supplements, Restatements, or Other Agreements*

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

*I. Reservation of Rights*

Nothing contained in the Plan or the Plan Supplement shall constitute an admission by the Debtors or any other party that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption, the Debtors or the Reorganized Debtors, as applicable, shall have thirty calendar days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease, including by rejecting such contract or lease *nunc pro tunc* to the Confirmation Date.

*J. Nonoccurrence of Effective Date.*

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code, unless such deadline(s) have expired.

*K. Contracts and Leases Entered Into After the Petition Date*

Contracts and leases entered into after the Petition Date by any Debtor and any Executory Contracts and Unexpired Leases assumed by any Debtor may be performed by the applicable Reorganized Debtor in the ordinary course of business.

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

*A. Timing and Calculation of Amounts to Be Distributed*

Unless otherwise provided in the Plan, on the Effective Date (or if a Claim or Interest is not an Allowed Claim or Interest on the Effective Date, on the date that such Claim becomes an Allowed Claim or Interest) each Holder of an Allowed Claim and Interest shall receive the full amount of the distributions that the Plan provides for Allowed Claims and Interests in each applicable Class and in the manner provided in the Plan. If 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 or Interests, distributions on account of any such Disputed Claims or Interests shall be made pursuant to the provisions set forth in Article VII. Except as otherwise provided in the Plan, Holders of Claims and Interests shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date. The Debtors shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date.

*B. Distributions on Account of Obligations of Multiple Debtors*

For all purposes associated with distributions under the Plan, all guarantees by any Debtor of the obligations of any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor, shall be deemed eliminated so that any obligation that could otherwise be asserted against more than one Debtor shall result in a single distribution under the Plan; *provided* that Claims held by a single Entity at different Debtors that are not based on guarantees or joint and several liability shall be entitled to the applicable distribution for such Claim at each applicable Debtor. Any such Claims shall be released and discharged pursuant to Article VIII of the Plan and shall be subject to all potential objections, defenses, and counterclaims, and to estimation pursuant to section 502(c) of the Bankruptcy Code. For the avoidance of doubt, this shall not affect the obligation of each and every Debtor to pay U.S. Trustee fees until such time as a particular case is closed, dismissed, or converted.

*C. Distribution Agent*

Except as otherwise provided in the Plan, all distributions under the Plan shall be made by the Distribution Agent on the Effective Date. The Distribution 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.

*D. Rights and Powers of Distribution Agent*

1. Powers of the Distribution Agent

The Distribution 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 Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

2. Expenses Incurred On or After the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and out-of-pocket expenses incurred by the Distribution Agent on or after the Effective Date (including taxes) and any reasonable compensation and out-of-pocket expense reimbursement claims (including reasonable, actual, and documented attorney and/or other professional fees and expenses) made by the Distribution Agent shall be paid in Cash by the Reorganized Debtors.

*E. Delivery of Distributions*

1. 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 Distribution Agent, as appropriate: (a) to the signatory set forth on any Proof of Claim or Proof of Interest filed by such Holder or other representative identified therein (or at the last known addresses of such Holder if no Proof of Claim or Proof of Interest is filed or if the Debtors have not 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 Distribution Agent, as appropriate, after the date of any related Proof of Claim or Proof of Interest; or (c) on any counsel that has appeared in the Chapter 11 Cases on the Holder's behalf. Subject to this Article VI, 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, and the Distribution Agent, as applicable, shall not incur any liability whatsoever on account of any distributions under the Plan except for fraud, gross negligence, or willful misconduct.

The amount of any reasonable fees and out-of-pocket expenses incurred by the DIP Agents or Term Loan Agents on or after the Effective Date (including taxes) and any reasonable compensation and out-of-pocket expense

reimbursement claims (including reasonable, actual, and documented attorney and/or other professional fees and expenses) made by the DIP Agents or Term Loan Agents in connection with effectuating distributions under the Plan shall be paid in Cash by the Reorganized Debtors.

2. Undeliverable Distributions and Unclaimed Property

In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Distribution Agent has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided, however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six (6) months from the later of (a) the Effective Date and (b) the date of the distribution. After such date, all unclaimed property or interests in property shall revert to the Reorganized Debtors automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial, 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 of and forever barred.

3. No Fractional Distributions

No fractional notes or shares, as applicable, of the Exit ABL Facility, the New First Lien Loan, or the New Common Stock shall be distributed, and no Cash shall be distributed in lieu of such fractional amounts. When any distribution pursuant to the Plan on account of an applicable Allowed Claim would otherwise result in the issuance of a number of notes or shares, as applicable, of the Exit ABL Facility, the New First Lien Loan, or the New Common Stock that is not a whole number, the actual distribution of notes or shares, as applicable, of the Exit ABL Facility, the New First Lien Loan, or the New Common Stock shall be rounded as follows: (a) fractions of one-half ( $\frac{1}{2}$ ) or greater shall be rounded to the next higher whole number and (b) fractions of less than one-half ( $\frac{1}{2}$ ) shall be rounded to the next lower whole number with no further payment therefor. The total number of authorized notes and shares, as applicable, of the Exit ABL Facility, the New First Lien Loan, or New Common Stock shall be adjusted as necessary to account for the foregoing rounding.

*F. Manner of Payment*

At the option of the Distribution Agent, any Cash payment to be made under the Plan may be made by check or wire transfer or as otherwise required or provided in applicable agreements.

*G. Compliance Matters*

In connection with the Plan, to the extent applicable, the Reorganized Debtors and the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtors and the Distribution Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtors reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

*H. No Postpetition or Default Interest on Claims*

Unless otherwise specifically provided for in the Plan, the DIP Order, or the Confirmation Order, and notwithstanding any documents that govern the Debtors' prepetition indebtedness to the contrary, (1) postpetition and/or default interest shall not accrue or be paid on any Claims and (2) no Holder of a Claim shall be entitled to: (a) interest accruing on or after the Petition Date on any such Claim; or (b) interest at the contract default rate, as applicable.



*I. Allocation Between Principal and Accrued Interest*

Except as otherwise provided in the Plan, the aggregate consideration paid to Holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof) and, thereafter, to the interest, if any, on such Allowed Claim accrued through the Petition Date.

*J. Setoffs and Recoupment*

Unless otherwise provided in the Plan or the Confirmation Order, each Debtor and each Reorganized Debtor, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, may set off against or recoup any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), any claims, rights, and Causes of Action of any nature that such Debtor or Reorganized Debtor, as applicable, may hold against the Holder of such Allowed Claim, to the extent such claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled as of the Effective Date (whether pursuant to the Plan or otherwise); *provided, however*, that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by such Debtor or Reorganized Debtor of any such claims, rights, and Causes of Action that such Reorganized Debtor may possess against such Holder. In no event shall any Holder of Claims be entitled to set off or recoup any such Claim against any claim, right, or Cause of Action of the Debtor or Reorganized Debtor (as applicable), unless such Holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff or recoupment on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of setoff or recoupment pursuant to section 553 of the Bankruptcy Code or otherwise.

*K. Claims Paid or Payable by Third Parties*

1. Claims Paid by Third Parties

A Claim shall be reduced in full, and such Claim shall be disallowed without an objection to such Claim 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 that 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 repay, return, or deliver any distribution held by or transferred to the Holder 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.

2. Claims Payable by Third Parties

The availability, if any, of insurance policy proceeds for the satisfaction of an Allowed Claim shall be determined by the terms of the insurance policies of the Debtors or Reorganized Debtors, as applicable. 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 to the extent of any agreed upon satisfaction on the Claims Register by the Solicitation Agent without a Claim objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. 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 an 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 in the Plan constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**ARTICLE VII.**  
**PROCEDURES FOR RESOLVING DISPUTED CLAIMS AND INTERESTS**

*A. Disputed Claims Process*

Holders of Claims and Interests need not file a Proof of Claim or Proof of Interest, as applicable, with the Bankruptcy Court and shall be subject to the Bankruptcy Court process only to the extent provided in the Plan, except to the extent a Claim arises on account of rejection of an Executory Contract or Unexpired Lease in accordance with Article V.B hereof. On and after the Effective Date, except as otherwise provided in the Plan, all Allowed Claims shall be paid pursuant to the Plan in the ordinary course of business of the Reorganized Debtors and shall survive the Effective Date as if the Chapter 11 Cases had not been commenced. Other than Claims arising from the rejection of an Executory Contract or Unexpired Lease, if the Debtors or the Reorganized Debtors dispute any Claim or Interest, such dispute shall be determined, resolved, or adjudicated, as the case may be, in a manner as if the Chapter 11 Cases had not been commenced and shall survive the Effective Date as if the Chapter 11 Cases had not been commenced, and all parties shall retain any and all rights, claims, causes of action, defenses, and remedies that such parties had immediately prior to or arising after the Petition Date. Solely to the extent that an Entity is required to file a Proof of Claim and the Debtors or the Reorganized Debtors, as applicable, do not determine, and without the need for notice to or action, order, or approval of the Bankruptcy Court, that the Claim subject to such Proof of Claim is Allowed, such Claim shall be Disputed unless Allowed or disallowed by a Final Order or as otherwise set forth in this Article VII of the Plan. For the avoidance of doubt, there is no requirement to file a Proof of Claim or Proof of Interest (or move the Court for allowance) to be an Allowed Claim or Allowed Interest, as applicable, under the Plan. Notwithstanding the foregoing, Entities must file cure objections as set forth in Article V.C hereof to the extent such Entity disputes the amount of the cure set forth in the Assumed Executory Contract and Unexpired Lease List. **All Proofs of Claim required to be filed by the Plan that are filed after the date that they are required to be filed pursuant to the Plan shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any further notice to or action, order, or approval of the Bankruptcy Court.**

*B. Claims Administration Responsibilities.*

Except as otherwise specifically provided in the Plan, after the Effective Date, the Reorganized Debtors shall have the sole authority to: (1) file, withdraw, or litigate to judgment, objections to Claims or Interests; (2) settle or compromise any Disputed Claim or Interest without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. For the avoidance of doubt, except as otherwise provided in the Plan, from and after the Effective Date, each Reorganized Debtor shall have and retain any and all rights and defenses such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to Article IV.Q of the Plan.

*C. Estimation of Claims and Interests*

Before or after the Effective Date, the Debtors or the Reorganized Debtors, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim or Interest that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim or Interest, including during the litigation of any objection to any Claim or Interest or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim or Interest, that estimated amount shall constitute a maximum limitation on such Claim or Interest for all purposes under the Plan (including for purposes of distributions), and the relevant Reorganized Debtor may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim or Interest.

*D. Adjustment to Claims Without Objection*

Any duplicate Claim or Interest or any Claim or Interest that has been paid, satisfied, amended, or superseded may be adjusted or expunged on the Claims Register by the Reorganized Debtors without the Reorganized Debtors having to file an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

*E. No Distributions Pending Allowance*

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

*F. Distributions After Allowance*

To the extent that a Disputed Claim or Interest ultimately becomes an Allowed Claim or Interest, distributions (if any) shall be made to the Holder of such Allowed Claim or Interest in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim or Interest becomes a Final Order, the Distribution Agent shall provide to the Holder of such Claim or Interest the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest to be paid on account of such Claim or Interest.

*G. No Interest*

Interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

**ARTICLE VIII.  
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

*A. Compromise and Settlement of Claims, Interests, and Controversies*

Pursuant to section 1123 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 and settlement of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest 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 Bankruptcy Rule 9019, 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, and Interests in, the Debtors and their Estates and Causes of Action against other Entities.

*B. Discharge of Claims*

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan (including, with respect to the Contingent DIP ABL Obligations, the Contingent DIP Term Obligations, the Contingent Prepetition ABL Obligations, the Contingent First Lien Term Loan Obligations, and the Contingent Second Lien Term Loan Obligations, in each case which are not discharged hereunder), or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Debtor Intercompany Claims or Non-Debtor Intercompany Claims resolved or compromised after the Effective Date by the Reorganized Debtors), Interests, and Causes of Action of any nature whatsoever, including any

interest accrued on Claims or Interests from and after the Petition Date, 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 and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtors prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before 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: (1) a Proof of Claim based upon such debt or right is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan or voted to reject the Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the occurrence of the Effective Date, except as otherwise specifically provided in the Plan (including, with respect to the Contingent DIP ABL Obligations, the Contingent DIP Term Obligations, the Contingent Prepetition ABL Obligations, the Contingent First Lien Term Loan Obligations, and the Contingent Second Lien Term Loan Obligations, in each case which are not discharged hereunder).

*C. Release of Liens*

**Except (1) with respect to the Liens securing (a) the Exit ABL Facility, (b) the New First Lien Loan, and (c) Other Secured Claims that are Reinstated pursuant to the Plan, (d) obligations pursuant to Executory Contracts and Unexpired Leases assumed pursuant to the Plan, or (2) as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates and, subject to the consummation of the applicable distributions contemplated in the Plan, shall be fully released and discharged, at the sole cost of and expense of the Reorganized Debtors, and the Holders of such mortgages, deeds of trust, Liens, pledges, or other security interests shall execute such documents as may be reasonably requested by the Debtors or the Reorganized Debtors, as applicable, to reflect or effectuate such releases, and all of the right, title, and interest of any Holders of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns.**

*D. Debtor Release*

**Effective as of the Effective Date, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Effective Date, each Released Party is deemed released and discharged by each and all of the Debtors, the Reorganized Debtors, and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, from any and all Causes of Action, whether known or unknown, including any derivative claims, asserted or assertable on behalf of any of the Debtors, that the Debtors, the Reorganized Debtors, or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), the purchase, sale, or rescission of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Prepetition ABL Facility, the First Lien Term Loan, the Second Lien Term Loan, the DIP Order, the DIP Facilities, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable, the RSA, the Disclosure Statement, the Exit ABL Facility, the New First Lien Loan, the Potter Settlement, the New Organizational Documents, the Plan, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the Disclosure Statement, the Exit ABL Facility, the New First Lien Loan, the Potter Settlement, the New Organizational Documents, or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other**

related agreement, or upon any other act, or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act, or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post-Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or (2) any retained Causes of Action.

*E. Third-Party Release*

Effective as of the Effective Date, each Releasing Party, in each case on behalf of itself and its respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, is deemed to have released and discharged each Debtor, Reorganized Debtor, and Released Party from any and all Causes of Action, whether known or unknown, including any derivative claims, asserted or assertable on behalf of any of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof), the purchase, sale, or rescission of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Prepetition ABL Facility, the First Lien Term Loan, the Second Lien Term Loan, the DIP Order, the DIP Facilities, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable, the RSA, the Disclosure Statement, the Exit ABL Facility, the New First Lien Loan, the Potter Settlement, the New Organizational Documents, the Plan, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the Exit ABL Facility, the New First Lien Loan, the Potter Settlement, the New Organizational Documents, or the Plan (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion), the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act, or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post-Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, (2) the Patriot Trust and Patriot Trust Debtor Affiliates from any claims filed in the Patriot Chapter 11 Cases, other than with respect to any claims filed by the Debtors or any Affiliates of the Debtors, (3) any claims or other rights, including rights of setoff, counterclaim, or recoupment, with respect to any claims filed in the Patriot Chapter 11 Cases (except to the extent expressly released pursuant to the Patriot Plan), and (4) any Cause of Action maintained by the Patriot Trust or the Patriot Trust Debtor Affiliates with respect to any Released Party or any other Entity (other than the Debtors or any Affiliates of the Debtors) that existed as of the date of substantial consummation of the Patriot Plan or that otherwise is based on or relating to, or in any manner arising from, in whole or in part, the Patriot Chapter 11 Cases or any dealings or transactions relating to or in any manner arising therefrom.

*F. Exculpation*

Effective as of the Effective Date, to the fullest extent permissible under applicable law and without affecting or limiting either the Debtor Release or the Third-Party Release, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is released and exculpated from any Cause of Action for any claim related to any act or omission in connection with, relating

to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the RSA and related prepetition transactions, the Disclosure Statement, the Plan, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion), except for claims related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon completion of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

*G. Injunction*

Effective as of the Effective Date, pursuant to section 524(a) of the Bankruptcy Code, to the fullest extent permissible under applicable law, and except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities that have held, hold, or may hold claims or interests that have been released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such claims or interests; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such claims or interests; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such claims or interests unless such Holder has filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a claim or interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or interests released or settled pursuant to the Plan.

*H. Protection Against Discriminatory Treatment*

In accordance with section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Governmental Unit shall discriminate against any Reorganized Debtor, or any Entity with which a Reorganized Debtor has been or is associated, or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors, or another Entity with whom the Reorganized Debtors have been associated, solely because such Reorganized Debtor was a Debtor under chapter 11, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

*I. Recoupment*

In no event shall any Holder of Claims or Interests be entitled to recoup any Claim or Interest against any claim, right, or Cause of Action of the Debtors or the Reorganized Debtors, as applicable, unless such Holder actually

has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

*J. Reimbursement or Contribution*

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the Effective Date, such Claim shall be forever disallowed notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Effective Date (1) such Claim has been adjudicated as noncontingent, or (2) the relevant Holder of a Claim has filed a noncontingent Proof of Claim on account of such Claim and a Final Order has been entered determining such Claim as no longer contingent.

*K. Term of Injunctions or Stays*

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases (pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court) and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

*L. Document Retention*

On and after the Effective Date, the Reorganized Debtors may maintain documents in accordance with their standard document retention policy, as may be altered, amended, modified, or supplemented by the Reorganized Debtors.

**ARTICLE IX.  
CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

*A. Conditions Precedent to the Effective Date.*

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived pursuant to Article IX.B of the Plan:

1. the Bankruptcy Court shall have entered the Confirmation Order, which shall be in form and substance consistent with the approval rights set forth in the RSA and the DIP ABL Agreement;
2. the Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan;
3. the final version of the Plan Supplement and all of the schedules, documents, and exhibits contained therein, and all other schedules, documents, supplements and exhibits to the Plan, shall have been filed and shall be in form and substance consistent with the approval rights set forth in the RSA and the DIP ABL Agreement;
4. the Exit ABL Facility Documents, shall be in full force and effect (with all conditions precedent thereto having been satisfied or waived), subject to any applicable post-closing execution and delivery requirements;
5. the New First Lien Loan Documents, shall be in full force and effect (with all conditions precedent thereto having been satisfied or waived), subject to any applicable post-closing execution and delivery requirements;

6. the New Organizational Documents and the Shareholders Agreement shall be in full force and effect (with all conditions precedent thereto having been satisfied or waived), subject to any applicable post-closing execution and delivery requirements;
7. all Professional Fee Claims and expenses of retained professionals required to be approved by the Bankruptcy Court shall have been paid in full or amounts sufficient to pay such fees and expenses after the Effective Date have been placed in the Professional Fee Escrow Account pending approval by the Bankruptcy Court; and
8. all reasonable and documented unpaid fees and expenses incurred on or before the Effective Date by all of the attorneys, advisors, and other professionals payable under the RSA or the DIP Order, shall have been paid in Cash.

*B. Waiver of Conditions Precedent*

The Debtors, with the reasonable consent of the Required Consenting Term Lenders and the DIP ABL Agent, may waive any of the conditions to the Effective Date set forth in Article IX.A of the Plan at any time without any notice to any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm and consummate the Plan.

*C. Substantial Consummation*

“Substantial Consummation” of the Plan, as defined in section 1101(2) of the Bankruptcy Code, with respect to any of the Debtors, shall be deemed to occur on the Effective Date with respect to such Debtor.

*D. Effect of Non-Occurrence of Conditions to Consummation*

If the Effective Date does not occur with respect to any of the Debtors, the Plan shall be null and void in all respects with respect to such Debtor, and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by or Claims against or Interests in such Debtors; (2) prejudice in any manner the rights of such Debtors, any Holders of a Claim or Interest, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by such Debtors, any Holders, or any other Entity in any respect.

**ARTICLE X.  
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

*A. Modification of Plan*

Subject to the limitations contained in the Plan and the RSA and the consent rights and limitations in the DIP ABL Agreement, the Debtors, with the reasonable consent of the Required Consenting Term Lenders, reserve the right to modify the Plan prior to Confirmation and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan and the consent rights and limitations in the DIP ABL Agreement (or the Exit ABL Agent with respect to provisions relating to the treatment, rights, or terms of the Exit ABL Facility), the Debtors expressly reserve their rights to alter, amend, or modify materially the Plan, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

*B. Effect of Confirmation on Modifications*

Entry of the Confirmation Order shall constitute approval of all modifications to the Plan occurring after the solicitation thereof pursuant to section 1127(a) of the Bankruptcy Code and a finding that such modifications to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.



C. *Revocation or Withdrawal of Plan*

Without limiting the respective rights of each party to the RSA or the DIP ABL Agent and DIP ABL Lenders, the Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if the Confirmation Date or the Effective Date does not occur, then: (1) the Plan will be null and void in all respects; (2) any settlement or compromise embodied in the Plan, assumption of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant hereto will be null and void in all respects; and (3) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action, (b) prejudice in any manner the rights of any Debtor or any other Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

**ARTICLE XI.  
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Claim or Interest and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; and (c) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that distributions to Holders of Allowed Claims and Interests (as applicable) are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;

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

6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (a) contracts, instruments, releases, indentures, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan, the Confirmation Order, and contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;

7. enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

8. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

9. adjudicate, decide, or resolve any and all matters related to the Restructuring Transactions;
10. adjudicate, decide, or resolve any and all matters related to enforcement of the RSA;
11. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;
12. resolve any cases, controversies, suits, disputes, Causes of Action, or any other matters that may arise in connection with the Consummation, interpretation, or enforcement of the Plan, the Disclosure Statement, the Confirmation Order, or the Restructuring Transactions, or any Entity's obligations incurred in connection with the foregoing, including disputes arising under agreements, documents, or instruments executed in connection with the Plan, the Disclosure Statement, the Confirmation Order, or the Restructuring Transactions;
13. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or an Interest for amounts not timely repaid pursuant to Article VI.K.1 of the Plan; (b) with respect to the releases, injunctions, and other provisions contained in Article VIII of the Plan, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan, the Confirmation Order, and, subject to any applicable forum selection clauses, contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan; or (d) related to section 1141 of the Bankruptcy Code;
14. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
15. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;
16. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
17. enter an order or Final Decree concluding or closing the Chapter 11 Cases;
18. enforce all orders previously entered by the Bankruptcy Court; and
19. hear any other matter not inconsistent with the Bankruptcy Code;

*Provided, however,* that the Bankruptcy Court shall not retain jurisdiction over disputes concerning documents contained in the Plan Supplement that have a jurisdictional, forum selection or dispute resolution clause that refers disputes to a different court, and any disputes concerning documents contained in the Plan Supplement that contain such clauses shall be governed in accordance with the provisions of such documents.

## **ARTICLE XII. MISCELLANEOUS PROVISIONS**

### **A. *Immediate Binding Effect***

Subject to Article IX.A hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

*B. Additional Documents*

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and the RSA. The Debtors or the Reorganized Debtors, as applicable, and all Holders of Claims and Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

*C. Statutory Fees*

All fees payable pursuant to section 1930(a) of the Judicial Code, including fees and expenses payable to the U.S. Trustee, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, will be paid by each of the applicable Reorganized Debtors for each quarter (including any fraction thereof) until the applicable Chapter 11 Case of such Reorganized Debtor is converted, dismissed, or closed, whichever occurs first.

*D. Payment of Certain Fees and Expenses*

Without any further notice to or action, order, or approval of the Bankruptcy Court, the Debtors or Reorganized Debtors, as applicable, shall pay on the Effective Date all then-outstanding reasonable and documented unpaid fees and expenses incurred on or before the Effective Date by all of the attorneys, advisors, and other professionals payable under the RSA or the DIP Order. Any such costs and expenses that are attorneys' fees and expenses shall be submitted to the Debtors or the Reorganized Debtors in the form of summary invoices of the relevant law firms. The Debtors and, after the Effective Date, the Reorganized Debtors, shall continue to pay, reimburse and honor Contingent DIP ABL Obligations, Contingent DIP Term Obligations, Contingent Prepetition ABL Obligations, Contingent First Lien Term Loan Obligations, and Contingent Second Lien Term Loan Obligations. In addition, the Reorganized Debtors shall continue to pay when due and payable in the ordinary course, reasonable and documented fees and expenses of the Ad Hoc Crossholder Lender Group Advisors (as defined in the RSA) and the Ad Hoc First Lien Lender Group Advisors (as defined in the RSA) related to implementation, consummation, or defense of the Plan. Counsel to the DIP Agents, the Term Loan Agents, the First Lien Term Loan Lenders, and Second Lien Term Loan Lenders shall be authorized to disburse any and all retainer monies in its possession to reimburse the reasonable fees and expenses of such counsel.

*E. Reservation of Rights*

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court has entered the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

*F. Certain Governmental Matters.*

Nothing in this Plan, the Plan Supplement, or the Confirmation Order shall discharge or release the Debtors, the Reorganized Debtors, or any non-debtor from any right, claim, liability, or Cause of Action of the United States or any State, or impair the ability of the United States or any State to pursue any claim, liability, right, defense, or Cause of Action against any Debtor, Reorganized Debtor, or non-debtor. Contracts, purchase orders, agreements, leases, covenants, guaranties, indemnifications, operating rights agreements, or other interests of or with the United States or any State shall be, subject to any applicable legal or equitable rights or defenses of the Debtors or the Reorganized Debtors under applicable non-bankruptcy law, paid, treated, determined, and administered in the ordinary course of business as if the Chapter 11 Cases were never filed and the Debtors and the Reorganized Debtors shall comply with all applicable non-bankruptcy law. All claims, liabilities, rights, Causes of Action, or defenses of or to the United States or any State shall survive the Chapter 11 Cases as if they had not been commenced and be determined in the ordinary course of business, including in the manner and by the administrative or judicial tribunals in which

such rights, defenses, claims, liabilities, or Causes of Action would have been resolved or adjudicated if the Chapter 11 Cases had not been commenced; *provided* that nothing in the Plan or the Confirmation Order shall alter any legal or equitable rights or defenses of the Debtors or the Reorganized Debtors under non-bankruptcy law with respect to any such claim, liability, or Cause of Action. Without limiting the foregoing, for the avoidance of doubt, nothing shall: (1) require the United States or any State to file any proofs of claim or administrative expense claims in the Chapter 11 Cases for any right, claim, liability, defense, or Cause of Action; (2) affect or impair the exercise of the United States' or any State's police and regulatory powers against the Debtors, the Reorganized Debtors, or any non-debtor; (3) be interpreted to set cure amounts or to require the United States or any State to novate or otherwise consent to the transfer of any federal or state contracts, purchase orders, agreements, leases, covenants, guaranties, indemnifications, operating rights agreements, or other interests; (4) affect or impair the United States' or any State's rights and defenses of setoff and recoupment, or ability to assert setoff or recoupment against the Debtors or the Reorganized Debtors and such rights and defenses are expressly preserved; (5) constitute an approval or consent by the United States or any State without compliance with all applicable legal requirements and approvals under non-bankruptcy law; or (6) relieve any party from compliance with all licenses and permits issued by Governmental Units in accordance with non-bankruptcy law.

Additionally, also for the avoidance of doubt, notwithstanding any other provision in the Plan, the Plan Supplement, or the Confirmation Order, nothing relieves the Debtors or the Reorganized Debtors from their obligations to comply with the Communications Act of 1934, as amended, and the rules, regulations, and orders promulgated thereunder by the FCC. No transfer of any FCC license or authorization held by the Debtors or transfer of control of the Debtors or transfer of control of an FCC licensee controlled by the Debtors shall take place prior to the issuance of FCC regulatory approval for such transfer pursuant to applicable FCC regulations. The FCC's rights and powers to take any action pursuant to its regulatory authority including imposing any regulatory conditions on any of the above described transfers, are fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or authority. In addition, nothing herein relieves the Debtors or the Reorganized Debtors from their obligations to comply with the Atomic Energy Act of 1954, as amended, and the rules, regulations, and orders promulgated thereunder by the NRC. No transfer of any NRC licenses held by the Debtors or transfer of control of the Debtors or transfer of control of an NRC licensee controlled by the Debtors shall take place prior to the issuance of NRC regulatory approval for such transfer pursuant to applicable NRC regulations. The NRC's rights and powers to take any action pursuant to its regulatory authority, including imposing any regulatory conditions on any of the above described transfers, are fully preserved, and nothing herein shall proscribe or constrain the NRC's exercise of such power or authority.

*G. Successors and Assigns*

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

*H. Service of Documents*

All notices, requests, and demands to or upon the Debtors to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

**If to the Debtors:**

Blackhawk Mining LLC  
 3228 Summit Square Place, Suite 180,  
 Lexington, Kentucky 40509  
 Attention: Jesse Parrish  
 E-mail: jparrish@blackhawkmining.com

With copies to:

Kirkland & Ellis LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Facsimile: (312) 862-2200  
Attention: Ross M. Kwasteniet, P.C. and Joseph M. Graham, Esq.  
E-mail: ross.kwasteniet@kirkland.com, joe.graham@kirkland.com

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, New York, 10022  
Facsimile: (212) 446-4900  
Attention: Stephen E. Hessler, P.C.  
E-mail: stephen.hessler@kirkland.com

Potter Anderson Corroon LLP  
1313 North Market Street, 6th Floor  
Wilmington, Delaware 19801-6108  
Facsimile: (302) 658-1192  
Attention: Christopher M. Samis, Esq., and L. Katherine Good, Esq.  
Email: csamis@potteranderson.com; kgood@potteranderson.com

**If to the Consenting Term Lenders:**

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attn: Brian M. Resnick, Esq., Dylan Consla, Esq., and Daniel Meyer, Esq.  
Email: brian.resnick@davispolk.com, dylan.consla@davispolk.com; daniel.meyer@davispolk.com

**If to the Ad Hoc Group of First Lien Lenders:**

Shearman & Sterling LLP  
599 Lexington Avenue  
New York, New York 10022  
Attn: Fredric Sosnick  
Ned. S. Schodek  
Email: fsosnick@shearman.com  
ned.schodek@shearman.com

**If to the DIP ABL Agent or Exit ABL Agent:**

MidCap Funding IV Trust  
c/o MidCap Financial Services, LLC, as servicer  
7255 Woodmont Avenue, Suite 200  
Bethesda, Maryland 20814  
Attn: Account Manager for Blackhawk transaction  
Facsimile: 301-941-1450  
E-mail: notices@midcapfinancial.com

With copies to:

MidCap Funding IV Trust  
c/o MidCap Financial Services, LLC, as servicer  
7255 Woodmont Avenue, Suite 200

Bethesda, Maryland 20814  
Attn: General Counsel  
Facsimile: 301-941-1450  
E-mail: legalnotices@midcapfinancial.com

Hogan Lovells US LLP  
390 Madison Avenue  
New York, New York 10017  
Facsimile: (212) 918-3100  
Attn: Deborah K. Staudinger, Esq.  
Email: deborah.staudinger@hoganlovells.com

**If to the DIP Term Agent, First Lien Term Loan Agent, or New First Lien Loan Agent:**

Cantor Fitzgerald Securities  
110 East 59th Street  
New York, New York 10022  
Attn: Nils E. Horning, Esq.  
Facsimile: (646) 219-1180  
Email: nhorning@cantor.com

With copies to:

Cantor Fitzgerald Securities  
900 West Trade Street, Suite 725  
Charlotte, North Carolina 28202  
Attn: Bobbie Young  
Facsimile: (646) 390-1764  
Email: byoung@cantor.com

Herrick, Feinstein LLP  
Two Park Avenue  
New York, New York, 10016  
Attn: Eric A. Stabler, Esq. and Steven B. Smith, Esq.  
Email: establer@herrick.com, ssmith@herrick.com

**If to the Second Lien Term Loan Agent:**

Cortland Capital Market Services LLC  
225 W. Washington Street, 9th Floor  
Chicago, Illinois 60606  
Attn: Legal Department and Tad White

With copies to:

Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York, New York 10038  
Attn: Alex Cota, Esq. and Gabriel E. Sasson, Esq.  
Email: acota@stroock.com, gsasson@stroock.com

After the Effective Date, the Reorganized Debtors shall have the authority to send a notice to Entities that continue to receive documents pursuant to Bankruptcy Rule 2002 requiring such Entity to file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Reorganized Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have filed such renewed requests.

*I. Entire Agreement*

Except as otherwise indicated, and without limiting the effectiveness of the RSA, the Plan (including, for the avoidance of doubt, the Plan Supplement) supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

*J. Plan Supplement Exhibits*

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from <https://cases.primeclerk.com/blackhawk> or the Bankruptcy Court's website at [www.del.uscourts.gov/bankruptcy](http://www.del.uscourts.gov/bankruptcy). Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, the Plan Supplement shall control. The documents considered in the Plan Supplement are an integral part of the Plan and shall be deemed approved by the Bankruptcy Court pursuant to the Confirmation Order.

*K. Non-Severability*

Except as set forth in Article VIII of the Plan, the provisions of the Plan, including its release, injunction, exculpation and compromise provisions, are mutually dependent and non-severable. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtors, the Required Consenting Parties (and without the consent of the New First Lien Loan Agent solely with respect to provisions relating to the treatment, rights, or terms of the New First Lien Loan), and the DIP ABL Agent (and without the consent of the Exit ABL Agent with respect to provisions relating to the treatment, rights, or terms of the Exit ABL Facility), *provided* that any such deletion or modification must be consistent with the RSA; and (3) non-severable and mutually dependent.

*L. Votes Solicited in Good Faith*

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan and any previous plan, and, therefore, no such parties, individuals, or the Reorganized Debtors will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan and any previous plan.

*M. Waiver or Estoppel*

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, the RSA, or papers filed with the Bankruptcy Court prior to the Confirmation Date.

*N. Closing of Chapter 11 Cases*

The Reorganized Debtors shall, promptly after the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

Dated: August 26, 2019

Respectfully submitted,

By: /s/ Jesse Parrish  
Name: Jesse Parrish  
Title: Chief Financial Officer

Prepared by:

Christopher M. Samis (DE 4909)  
L. Katherine Good (DE 5101)  
**POTTER ANDERSON CORROON LLP**  
1313 North Market Street, 6th Floor  
P.O. Box 951  
Wilmington, Delaware 19801-6108  
Telephone: (302) 984-6000  
Facsimile: (302) 658-1192  
Email: csamis@potteranderson.com  
kgood@potteranderson.com  
- and -

James H.M. Sprayregen, P.C.

Ross M. Kwasteniet, P.C. (admitted *pro hac vice*)  
Joseph M. Graham (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200  
Email: james.sprayregen@kirkland.com  
ross.kwasteniet@kirkland.com  
joe.graham@kirkland.com  
- and -

Stephen E. Hessler, P.C. (admitted *pro hac vice*)

**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900  
Email: stephen.hessler@kirkland.com

*Counsel to the Debtors and Debtors in Possession*



**Exhibit B**

**Form of Confirmation Order Notice**

**NO IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

---

In re:	)	Chapter 11
	)	
BLACKHAWK MINING LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11595 (LSS)
	)	
Debtors.	)	(Jointly Administered)
	)	

---

**NOTICE OF (I) ENTRY OF ORDER APPROVING THE DEBTORS’ DISCLOSURE STATEMENT FOR, AND CONFIRMING, THE DEBTORS’ JOINT PREPACKAGED CHAPTER 11 PLAN PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE AND (II) OCCURRENCE OF EFFECTIVE DATE**

**PLEASE TAKE NOTICE** that on [August 28], 2019, the Honorable Laurie Selber Silverstein , United States Bankruptcy Judge for the United States Bankruptcy Court for the District of Delaware (the “Court”), entered an order [Docket No. [\_\_]] (the “Confirmation Order”) confirming the *Debtors’ Joint Prepackaged Chapter 11 Plan of Reorganization* [Docket No. 231] (the “Plan”)<sup>2</sup> and approving the *Disclosure Statement for the Debtors’ Joint Prepackaged Chapter 11 Plan of Reorganization* [Docket No. 17] (the “Disclosure Statement”) of the above-captioned debtors and debtors in possession (the “Debtors”).

**PLEASE TAKE FURTHER NOTICE** that the Effective Date of the Plan occurred on [\_\_\_\_], 2019. Each of the conditions precedent to consummation of the Plan enumerated in Article IX of the Plan have been satisfied or waived in accordance with the Plan and the Confirmation Order.

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number include: Blackhawk Mining LLC (5600); Blackhawk Coal Sales, LLC (9456); Blackhawk Land and Resources, LLC (7839); Blackhawk River Logistics, LLC (3388); Blue Creek Mining, LLC (2427); Blue Diamond Mining, LLC (3488); Eagle Shield, LLC (6721); FCDC Coal, Inc. (6188); Guyandotte Mining, LLC (4882); Hampden Coal, LLC (8241); Kanawha Eagle Mining, LLC (0586); Logan & Kanawha, LLC (3178); Panther Creek Mining, LLC (0627); Pine Branch Land, LLC (9661); Pine Branch Mining, LLC (9681); Pine Branch Resources, LLC (9758); Redhawk Mining, LLC (0852); Rockwell Mining, LLC (3874); Spruce Pine Land Company (2254); Spurlock Mining, LLC (2899); Triad Mining, LLC (7713); and Triad Trucking, LLC (6112). The location of the Debtors’ service address in these chapter 11 cases is 3228 Summit Square Place, Suite 180, Lexington, Kentucky 40509.

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

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Confirmation Order, the release, injunction, and exculpation provisions in Article VIII of the Plan are now in full force and effect.

**PLEASE TAKE FURTHER NOTICE** that requests for payment of Professional Fee Claims must be filed and served on the Debtors or Reorganized Debtors by [●], 2019, which is the date 45 days after the Effective Date.

**PLEASE TAKE FURTHER NOTICE** that if you would like copies of the documents included in the Plan, the Plan Supplement, the Confirmation Order, the Disclosure Statement, or any other document filed in these chapter 11 cases, you may contact Prime Clerk LLC, the notice, claims, and solicitations agent retained by the Debtors in the Chapter 11 Cases, by: (a) calling the Debtors' restructuring hotline at (877) 759-8790; (b) visiting the Debtors' restructuring website at: [www.primeclerk.com/blackhawkmining](http://www.primeclerk.com/blackhawkmining); or (c) writing to the Solicitation Agent at the following address: Blackhawk Mining, c/o Prime Clerk LLC, One Grand Central Place, 60 East 42nd Street (Park Avenue), Suite 1440, New York, New York 10165. You may also obtain copies of any pleadings filed in the Chapter 11 Cases for a fee via PACER at: [www.deb.uscourts.gov](http://www.deb.uscourts.gov).

**PLEASE TAKE FURTHER NOTICE** that the Plan and the Confirmation Order contain other provisions that may affect your rights. You are encouraged to review the Plan and the Confirmation Order in their entirety.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated: [\_\_\_\_], 2019  
Wilmington, Delaware

*/s/ Draft*

---

Christopher M. Samis (DE 4909)  
L. Katherine Good (DE 5101)  
**POTTER ANDERSON CORROON LLP**  
1313 North Market Street, 6th Floor  
P.O. Box 951  
Wilmington, Delaware 19801-6108  
Telephone: (302) 984-6000  
Facsimile: (302) 658-1192  
Email: csamis@potteranderson.com  
kgood@potteranderson.com

*Counsel to the Debtors and Debtors in Possession*

James H.M. Sprayregen, P.C.  
Ross M. Kwasteniet, P.C. (admitted *pro hac vice*)  
Joseph M. Graham (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200  
Email: james.sprayregen@kirkland.com  
ross.kwasteniet@kirkland.com  
joe.graham@kirkland.com

- and -

Stephen E. Hessler, P.C. (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900  
Email: stephen.hessler@kirkland.com

*Counsel to the Debtors and Debtors in Possession*