



U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed October 30, 2015


United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: § Chapter 11
ERG Intermediate Holdings, LLC, §
et al.,¹ § Jointly Administered
Debtors. § Case No.: 15-31858-hdh-11

ORDER CONFIRMING THE FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION DATED SEPTEMBER 18, 2015, AS AMENDED, IN RESPECT OF ERG INTERMEDIATE HOLDINGS, LLC AND ITS AFFILIATED DEBTORS

Based on the findings of fact and conclusions of law (the “Findings of Fact and Conclusions of Law”) entered by this Bankruptcy Court relating to the *First Amended Joint Chapter 11 Plan of Reorganization Dated September 18, 2015 in Respect of ERG Intermediate Holdings, LLC and Its Affiliated Debtors* [Docket No. 518] (as amended, the “Plan”),² a true and

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are ERG Intermediate Holdings, LLC (2521); ERG Resources, L.L.C. (0408); West Cat Canyon, L.L.C. (7377); ERG Interests, LLC (2081); and ERG Operating Company, LLC (8385). ERG Intermediate Holdings, LLC is the direct or indirect parent of each of its affiliated Debtors. The mailing address for each of the Debtors, with the exception of ERG Operating Company, LLC, is 333 Clay Street Suite 4400, Houston, TX 77002. The mailing address for ERG Operating Company, LLC is 4900 California Avenue Suite 300B, Bakersfield, CA 93309. The above addresses are listed solely for the purposes of notices and communications.

² Where the context requires, each capitalized term used but not otherwise defined herein shall have the meaning ascribed to such term in the Plan.

correct copy of which is attached hereto as Exhibit A and the supporting disclosure statement [Docket No. 519] (the “Disclosure Statement”), it is hereby ORDERED, ADJUDGED DECREED, AND DETERMINED as follows:

Approval of the Disclosure Statement and Confirmation of the Plan

1. Pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017(b), the Disclosure Statement is **APPROVED** on a final basis.

2. Pursuant to section 1129 of the Bankruptcy Code, the Plan, as amended, modified, clarified, and/or supplemented as provided in this Confirmation Order, is hereby **CONFIRMED** and all terms and conditions set forth therein are **APPROVED** as amended, modified, clarified, and/or supplemented herein. The Objections identified in paragraph 90 of this Confirmation Order are resolved as set forth therein. All other objections are **OVERRULED** and denied.

3. The following are hereby incorporated by reference into and are an integral part of this Confirmation Order: (i) the Plan, (ii) the exhibits to the Plan, and (iii) the Plan Documents, including the Plan Supplement. The failure to reference any particular Plan Document or any provision of a Plan Document or the Plan in this Confirmation Order will have no effect on the Bankruptcy Court’s approval and authorization of, or the validity of, binding effect or enforceability of, the Plan and the Plan Documents in their entirety.

Findings of Fact and Conclusions of Law

4. The Findings of Fact and Conclusions of Law are incorporated into this Confirmation Order as if fully restated herein.

Consolidation

5. Subject to the occurrence of the Effective Date, solely for purposes of voting, confirmation, and distribution, pursuant to Section 4.1 of the Plan, the Estates are hereby

substantively consolidated. Such consolidation shall not affect any Debtor's status as a separate legal entity.

Compromises and Settlements Under the Plan

6. The settlements and compromises set forth in the Plan are approved in all respects, including the Approved Settlement and Transaction Support Agreement, which the Bankruptcy Court approved by separate order on August 26, 2015 [Docket No. 450].

Exit Facility

7. The Exit Facility is approved in all respects.

8. The Debtors are authorized and directed to execute, deliver, and perform their respective obligations under and in connection with the Exit Facility.

9. As of the Effective Date, the Exit Facility Loan Documents are valid, binding, and enforceable on the Debtors in accordance with their terms.

10. As of the Effective Date, the Exit Facility Lien is a binding, continuing, enforceable, fully perfected, first priority Lien, subject only to Liens permitted under the Exit Facility.

11. On the Effective Date, the Reorganized Debtors shall draw on the Exit Facility an amount sufficient to satisfy all DIP Facility Claims and shall pay the proceeds of such draw to the DIP Agent in full satisfaction of the DIP Facility Claims or make such other arrangements for satisfaction of the DIP Facility Claims as directed by the DIP Agent in writing. Upon full payment and satisfaction of all DIP Facility Claims, the DIP Liens shall be discharged.

12. On the Effective Date, the Reorganized Debtors shall draw on the Exit Facility in an amount equal to (i) the Confirmation Payment and shall pay the proceeds of such draw to R.

Kelly Plato in full satisfaction thereof and (ii) the Exempt Assets Trust Advance and shall transfer such amount to the Exempt Assets Trust.

Amended and Restated Prepetition Loan Documents

13. The Amended and Restated Prepetition Loan Documents are approved in all respects.

14. The Debtors are authorized and directed to execute, deliver, and perform their respective obligations under and in connection with the Amended and Restated Prepetition Loan Documents.

15. The Amended and Restated Prepetition Loan Documents, including, without limitation, any intercreditor agreements, are valid, binding, and enforceable on the Debtors in accordance with their terms.

16. The Liens reaffirmed under the Amended Restated Prepetition Loan Documents are binding, continuing, enforceable, fully perfected, first priority Liens, subject only to Exit Facility Liens.

17. The execution and effectiveness of the Amended and Restated Prepetition Loan Documents does not extinguish, discharge or release any obligations outstanding under or Liens granted in connection with the Prepetition Loan Documents. Further, the effectiveness of the Amended and Restated Prepetition Loan Documents shall not be construed as a novation of any Prepetition Facility Claims, all of which shall remain in full force and effect, except as expressly modified by the Amended and Restated Prepetition Loan Documents.

18. The Prepetition Agent shall be entitled to receive all Production Proceeds (as defined in the Amended and Restated Prepetition Loan Documents) as permitted by the Amended and Restated Prepetition Loan Documents, and the receipt of such Production

Proceeds shall not constitute a violation of section 726 of the California Code of Civil Procedure or trigger any anti-deficiency law.

Classification and Treatment

19. All Claims and Membership Interests shall be, and hereby are, classified and treated as set forth in the Plan. The Plan's classification scheme shall be, and hereby is, approved.

20. The treatment of all Claims and Membership Interests as provided in the Plan and the Plan Documents shall be, and hereby is, approved.

Administrative Claims

21. The failure to timely file and serve notice of an Administrative Claim as provided in the Plan shall result in the Administrative Claim being forever barred and discharged.

22. The failure to timely file and serve a Fee Application as provided in the Plan shall result in the Fee Claim being forever barred and discharged.

23. To the extent the Fee Claims of Professionals retained by the Committee exceed the cap set forth in the Approved Settlement and Transaction Support Agreement, any such fees and expenses shall not be paid by the Prepetition Agent from any collateral of the Prepetition Agent or by the Debtors from proceeds of the DIP Facility, provided, that the Committee's right to pay such fees and expenses from the Exempt Assets in accordance with Section 3 of the Approved Settlement and Transaction Support Agreement is preserved.

Materialmen's Lien Claims

24. On the Effective Date, each Claim secured by a Materialmen's Lien that was either perfected (i) under section 546 of the Bankruptcy Code or (ii) prior to the Petition Date, under applicable non-bankruptcy law (each a "Potentially Secured Materialmen's Lien Claim"), shall be deemed a disputed Claim and not an Allowed Claim.

25. The Prepetition Agent shall have standing to challenge the status of such Claim as an Other Secured Claim and to otherwise object to such Claim.

26. The Bankruptcy Court shall retain jurisdiction to hear and determine any objections to a Potentially Secured Materialmen's Lien Claim and to determine the validity and extent of any such Claim.

27. If the Bankruptcy Court determines that the Materialmen's Lien securing such Potentially Secured Materialmen's Lien Claim is senior to the Prepetition Facility Liens, then such Claim shall be deemed an Allowed Other Secured Claim and shall be paid as set forth in Section 4.1(c) of the Plan.

28. If the Bankruptcy Court determines that the Prepetition Facility Liens are senior to the Materialmen's Lien securing such Potentially Secured Materialmen's Lien Claim, then such Materialmen's Lien shall be null, void and unenforceable and such Potentially Secured Materialmen's Lien Claim shall be treated as a Class 5 - Unsecured Claim for all purposes.

29. On the Effective Date, all Claims secured or alleged to be secured by Materialmen's Liens that are not Potentially Secured Materialmen's Lien Claims shall be treated as Class 5 - Unsecured Claims for all purposes and all Liens securing such Claims shall be deemed null, void and unenforceable as of such date.

Indemnification Claims

30. This Confirmation Order constitutes an objection by the Prepetition Agent to any Claim for indemnification arising from conduct that occurred prior to the Petition Date and asserted on account of any provision contained in any Prepetition Indemnification Agreement (an “Indemnification Claim”). Because this Confirmation Order is an objection to all Indemnification Claims, no Indemnification Claim is an Allowed Claim unless and until it is Allowed by a subsequent Final Order.

31. The Prepetition Agent shall have exclusive standing to prosecute objections to any Indemnification Claim for the benefit of the Estates; provided that any settlement of an Indemnification Claim shall be subject to Bankruptcy Court approval pursuant to the standards applicable to requests for approval pursuant to Bankruptcy Rule 9019. Further, the Prepetition Agent shall have the sole standing on behalf of itself and, as estate representative pursuant to section 1123(b)(3) of the Bankruptcy Code, on behalf of the Debtors’ Estates to resolve any disputes concerning Section 7.10(b) of the Plan and any such disputes shall be resolved by the Bankruptcy Court.

32. To the extent any such Indemnification Claim is Allowed, such Indemnification Claim shall constitute an Allowed Unsecured Claim and shall be treated as a Class 5 – Unsecured Claim for purposes of the Plan. Without limiting the foregoing, none of the Reorganized Debtors or their successors or assigns shall be liable for any Indemnification Claim which arose from, in whole or in part, conduct which occurred prior to the Effective Date.

33. Without limiting any other provision of the Plan, the Assets shall hereby revest in the applicable Reorganized Debtors free and clear of any Lien, restriction, covenant or interest constituting or relating to a Claim for indemnification, including an Indemnification Claim,

arising on account of any Prepetition Indemnification Agreement, unless the Prepetition Indemnification Agreement containing such Lien, restriction, covenant, or interest is expressly assumed pursuant to the Plan. This Bankruptcy Court shall enter all other orders required under section 1142(b) of the Bankruptcy Code to implement the relief granted in this paragraph.

34. The Bankruptcy Court shall retain jurisdiction to hear and determine any objections to an Indemnification Claim and to determine the validity of any Lien, restriction, covenant or interest constituting or relating to a Claim for indemnification.

Other Secured Claims

35. The Prepetition Agent shall have standing to object to an Other Secured Claim.

Enforceability of Plan and Plan Documents

36. Pursuant to sections 1123(a), 1141(a) and 1142 of the Bankruptcy Code and the provisions of this Confirmation Order, the Plan and all Plan-related documents (including, but not limited to, the Plan Documents and Plan Supplement) shall be, and hereby are, valid, binding and enforceable notwithstanding any otherwise applicable non-bankruptcy law. Each of the Plan Documents, including the Plan Supplement (to the extent not already approved by order of this Bankruptcy Court) is hereby approved. The Debtors and the Reorganized Debtors, as applicable, may modify, amend, or enter into the Plan Documents, without further order of the Bankruptcy Court, in accordance with the provisions of the Plan, including, without limitation, Section 7.7 of the Plan.

Authorization to Implement the Plan

37. Upon the entry of this Confirmation Order, the Debtors, the Reorganized Debtors, the ERG Plan Trustee, and the Exempt Assets Trustee are authorized to take or cause to be taken all corporate, trust, and limited liability company actions necessary or appropriate to implement all provisions of, and to consummate, the Plan, on and after the Effective Date, including,

without limitation, (i) the appointment of the ERG Plan Trustee as the sole director of the Reorganized Debtors; (ii) the appointment of officers of the Reorganized Debtors in accordance with the Plan; (iii) the adoption of the Reorganized Debtor Operating Agreements, which shall supersede the prior articles of incorporation, limited liability company agreements, by-laws, or other organizational documents, as appropriate of each of the Reorganized Debtors; (iv) actions as are necessary or appropriate to close any of the Other Debtors' Chapter 11 Cases, and to execute, enter into, deliver, record, or otherwise make effective all documents arising in connection therewith, including, without limitation, the Plan Documents (as they may be amended or modified as contemplated or permitted by the Plan), including the Amended and Restated Prepetition Loan Documents and the Exit Facility Loan Documents and the cancellation, nullification, and voiding of the ERG Interests Royalty Interest; and (v) actions as are necessary or appropriate to execute, enter into, deliver, record, or otherwise make effective all Plan Documents (as they may be amended or modified as contemplated or permitted by the Plan).

38. All such actions taken or caused to be taken, including, among other things, the incurrence of all obligations contemplated by the Plan and the Approved Settlement and Transaction Support Agreement and the making of Plan Distributions, shall be, and hereby are, authorized and approved by the Bankruptcy Court such that no further approval, act or action need to be taken under any applicable law, order, rule or regulation, including without limitation, any action otherwise required by the members, stockholders, directors, or managers of the Debtors, the Reorganized Debtors, or any of their Affiliates.

39. The approvals and authorizations specifically set forth in this Confirmation Order are not intended to limit the authority of the Debtors, the Reorganized Debtors, the ERG Plan

Trustee, the Exempt Assets Trustee, or any of their Affiliates to take any and all actions necessary or appropriate to implement, effectuate and consummate any and all documents or transactions contemplated by the Plan or this Confirmation Order.

Cancellation of Instruments and Securities

40. Upon the occurrence of the Effective Date, all Membership Interests in Intermediate Holdings shall be cancelled.

41. Further, upon the occurrence of the Effective Date, the ERG Interests Royalty Interest shall be cancelled, nullified, and voided, and ERG Interests shall no longer have any rights whatsoever in respect of the ERG Interests Royalty Interest or the cancellation, nullification, or voiding thereof.

Issuance of New Membership Interests

42. The issuance of the new Membership Interests in Reorganized Intermediate Holdings is hereby authorized without the need for any further corporate action or authorization or approval by the Bankruptcy Court. The new Membership Interests are exempt from registration under the Securities Act and state securities laws pursuant to section 1145 of the Bankruptcy Code.

43. On the Effective Date, the new Membership Interests in Reorganized Intermediate Holdings shall be issued to the ERG Plan Trust, free and clear of any and all Liens, Claims, and interests other than (i) the Exit Facility Liens and (ii) the Prepetition Facility Liens. The new Membership Interests in Reorganized Intermediate Holdings shall be certificated and transferred to the possession of the Exit Facility Agent and the Prepetition Agent, with such other documentation as may be needed to perfect the Liens of the Exit Facility Agent and the Prepetition Agent in and to such new Membership Interests.

Membership Interests Held by the Other Debtors

44. The Membership Interest in each Other Debtor shall revert in the Reorganized Debtor that held such Membership Interest immediately prior to the Effective Date without the need for any further authorization or approval by the Bankruptcy Court. All such Membership Interests shall be certificated and transferred to the possession of the Exit Facility Agent and the Prepetition Agent with such other documentation as may be needed to perfect the Liens of the Exit Facility Agent and the Prepetition Agent in and to such new Membership Interests.

Royalty Interests/Oil & Gas Leases

45. The Prepetition Agent shall have exclusive standing to prosecute in its sole and absolute discretion any and all Avoidance Actions relating to, on account of, or otherwise in respect of the RCPTX Royalty Interest and any transfer thereof and shall be designated the estate representative of the Estates under section 1123(b)(3) of the Bankruptcy Code for purposes of asserting such Avoidance Actions. Such Avoidance Actions shall not constitute Transferred Causes of Action and shall be preserved notwithstanding the confirmation of the Plan. Further, nothing in the Plan shall impair the rights of the Prepetition Agent to foreclose upon any Lien it may have in respect of the RCPTX Royalty Interest.

46. On the Effective Date, each Debtor's right, title, and interest in and to all of such Debtor's oil and gas leases relating to the California Assets, including those oil and gas leases set forth on Schedule 3 to the Plan, shall revert in such Debtor as reorganized hereby on the terms and conditions set forth in the Plan, including as provided in Section 7.4 and Section 14.4 of the Plan.

Separate Existence/Revesting of Assets

47. The Reorganized Debtors shall continue to exist after the Effective Date as separate entities, with all the powers available to such legal entities, in accordance with applicable law.

48. Upon the occurrence of the Effective Date, except as otherwise expressly provided in the Plan, title to all of the Assets of each Debtor's Estate, other than the Exempt Assets, shall revest in each such Debtor free and clear of all Liens, Claims, interests, other than (i) the Liens granted in connection with the Exit Facility and (ii) the Prepetition Facility Liens and without further order of the Bankruptcy Court. In the interest of clarity, nothing in the Plan or this Confirmation Order shall limit, modify, discharge or affect any of the liens granted in connection with the Exit Facility or the Prepetition Facility Liens. On and after the occurrence of the Effective Date, except as otherwise provided in the Plan, the Reorganized Debtors may operate their businesses and may use, acquire and dispose of their Assets free of any restrictions of the Bankruptcy Code.

Preservation of Causes of Action for Prosecution Following the Effective Date

49. The Plan and Disclosure Statement have described all the Causes of Action of the Debtors and the Estates preserved thereby with adequate specificity and clarity so as to advise potential defendants of potential claims against them. Other than the Released Causes of Action of the Debtors and the Estates and any other Cause of Action of the Debtors and the Estates specifically and expressly released in the Plan, all other Causes of Action of the Debtors and the Estates are preserved and may be asserted and prosecuted as provided in the Plan and this Confirmation Order.

Retention of Causes of Action by the Reorganized Debtors

50. Except for the Transferred Causes of Action, the Released Causes of Action, and as otherwise specifically set forth in the Plan or in a Final Order, all Causes of Action of the Debtors and their Estates shall, upon the occurrence of the Effective Date, be vested in the Reorganized Debtors. Except as otherwise provided in the Plan, the rights of the Reorganized Debtors to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date.

51. The Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action (other than the Transferred Causes of Action, the Released Causes of Action, and as otherwise provided for in the Plan and herein) against any Person. Other than the Causes of Action expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, the Debtors expressly reserve all Causes of Action (other than the Transferred Causes of Action) for later adjudication.

Transferred Causes of Action

52. All Transferred Causes of Action of the Debtors and their Estates shall, upon the occurrence of the Effective Date, be vested in the Exempt Assets Trust. Except as otherwise provided in the Plan, the rights of the Exempt Assets Trustee to commence, prosecute, or settle such Transferred Cause of Action shall be preserved notwithstanding the occurrence of the Effective Date.

53. Nothing in the Plan or otherwise shall impair, modify, impede, compromise or limit the ability of the Exempt Assets Trust to investigate and prosecute the Transferred Causes of Action and all such Causes of Action are expressly preserved notwithstanding the occurrence

of the Effective Date. The Exempt Assets Trustee shall be the Estate representative designated to prosecute any and all Transferred Causes of Action.

54. The Exempt Assets Trust expressly reserves all rights to prosecute any and all Transferred Causes of Action against any Person at any time and for any reason. The Exempt Assets Trust reserves all Transferred Causes of Action for later adjudication.

Disbursing Agent/Distributions

55. Upon the occurrence of the Effective Date, (i) the Reorganized Debtors shall be appointed to serve as the Disbursing Agent with respect to all Administrative Claims, Tax Claims, Priority Claims, Cure Claims, and Other Secured Claims; (ii) the Exempt Assets Trustee shall be appointed to serve as the Disbursing Agent with respect to Convenience Claims and holders of Exempt Assets Trust Beneficial Interests; and (iii) the ERG Plan Trustee shall be appointed to serve as the Disbursing Agent with respect to holders of ERG Plan Trust Beneficial Interests.

56. Each of the Reorganized Debtors, the Exempt Assets Trustee, and the ERG Plan Trustee, in their respective capacities as a Disbursing Agent, shall have all powers, rights, protections, obligations, and duties afforded or imposed upon the Disbursing Agent under the Plan, but solely with respect to those Claims and Membership Interests on account of which the applicable Disbursing Agent is designated to make Plan Distributions under the Plan and Plan Documents, provided that the ERG Plan Trustee or the Reorganized Debtors shall not agree or consent to the reclassification of any Claim as an Unsecured Claim without either the written consent of the Exempt Assets Trustee or approval of the Bankruptcy Court under Bankruptcy Rule 9019. Notwithstanding the foregoing, the Exempt Assets Trustee, in its capacity as the Disbursing Agent with respect to the holders of Exempt Assets Trust Beneficial Interests, shall

have sole and exclusive authority to object to Unsecured Claims and Convenience Claims and the ERG Plan Trustee, in its capacity as Disbursing Agent with respect to holders of ERG Plan Trust Beneficial Interests, shall be bound by (i) the outcome of any such objection, whether achieved by litigation, settlement, or otherwise; and (ii) the consequences of any failure to file such an objection. Nothing in the Plan or herein shall affect the rights of the Prepetition Agent to object to an Other Secured Claim or a Potentially Secured Materialmen's Lien Claim or exercise any of its rights under Section 7.10 of the Plan.

57. Distributions under the Plan to each holder of an Allowed Insured Claim shall be in accordance with the treatment provided under the Plan for the Class in which such Allowed Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from proceeds payable to the holder thereof under any pertinent insurance policies and applicable law. Nothing in Section 9.8 of the Plan shall constitute a waiver of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities that any Person may hold against any other Person, including the Debtors' insurance carriers.

58. The applicable Disbursing Agent or any other Person with standing to object shall file objections to Claims and Membership Interests, if any, with the Bankruptcy Court as soon as practicable but in any event not later than (i) the date that is one hundred and eighty (180) days after the Effective Date; or (ii) such later date as may be established by order of the Bankruptcy Court upon motion of the applicable Disbursing Agent or other Person with standing, provided that the Exempt Assets Trustee shall be permitted in his discretion to allow Unsecured Claims prior to the Objection Deadline. The applicable Disbursing Agent or other Person with standing shall serve any objection to a Claim upon the holder of the Claim to which the applicable Disbursing Agent or other Person with standing objects. For the avoidance of doubt, except as

otherwise provided in this Confirmation Order or in the Plan, the Exempt Assets Trustee shall have the sole and exclusive authority to object to Unsecured Claims and Convenience Claims. Further, the Exempt Assets Trustee shall retain all of his rights under applicable law (if any) to intervene in any proceeding brought by the Prepetition Agent pursuant to Section 4.1(c) and Section 7.10 of the Plan and the Prepetition Agent shall reserve all of its rights under applicable law to object to any such intervention.

59. Subject to other provisions of the Plan governing authority and standing to object to Claims and Membership Interests, the applicable Disbursing Agent may object to the Allowance of Claims and Membership Interests filed with the Bankruptcy Court with respect to which liability is disputed in whole or in part. All objections that are filed and prosecuted as provided in the Plan and herein shall be litigated to Final Order or compromised and settled in accordance with the Plan.

Insurance and Indemnity Obligations

60. From and after the Effective Date, each of the Debtors' insurance policies, including, without limitation, any and all directors and officers or similar liability and fiduciary (including ERISA) insurance or tail policies, in existence immediately prior to the Effective Date shall be reinstated (or replaced by a like policy) and continued in accordance with its terms and shall, to the extent applicable, be deemed assumed by the applicable Reorganized Debtor pursuant to section 365 of the Bankruptcy Code and the Plan. Each insurance carrier under such policies shall continue to honor and administer the policies with respect to the Reorganized Debtors in the same manner and according to the same terms and practices applicable to the Debtors prior to the Effective Date.

61. Subject to the immediately following paragraph, the obligations of each Debtor or Reorganized Debtor to indemnify any person who is serving or has served as one of its managers, officers, or employees as of the Petition Date by reason of such person's prior or future service in such a capacity or as a manager, officer, or employee of another corporation, partnership or other legal entity, to the extent provided in the applicable certificates of incorporation, by-laws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with such Debtor, will be deemed and treated as executory contracts that are assumed by the applicable Debtor or Reorganized Debtor pursuant to section 365 of the Bankruptcy Code and the Plan as of the Effective Date. Accordingly, such indemnification obligations will survive and be unaffected this Confirmation Order, irrespective of whether such indemnification is owed for an act or event occurring before or after the Petition Date, unless otherwise provided in the Plan or this Confirmation Order.

62. Notwithstanding anything else to the contrary contained in the Plan or this Confirmation Order, including Section 7.16 of the Plan and the immediately preceding paragraph, none of the Debtors or the Reorganized Debtors shall be liable for or assume in any manner any obligation to indemnify Scott Y. Wood, except to the extent such indemnification is paid for by any insurance available immediately prior to the Effective Date.

The ERG Plan Trust

63. The ERG Plan Trust Declaration, substantially in the form filed as a Plan Document, is hereby approved and shall be fully enforceable according to its terms.

64. The ERG Plan Trust shall be administered by Sean Clements, Managing Director, Opportune LLP, whose appointment is hereby approved. The terms of the ERG Plan Trustee's compensation as set forth in Exhibit I of the Plan is hereby approved. The ERG Plan Trustee

shall have all powers, rights, duties and protections afforded the ERG Plan Trustee under the Plan and any applicable Plan Document, including the ERG Plan Trust Declaration. On the Effective Date, the ERG Plan Trustee shall be appointed as the sole manager/director of each of the Reorganized Debtors and shall have all of the powers of a manager/director under the Reorganized Debtor Operating Agreements and applicable law.

65. For the avoidance of doubt, neither CLMG Corp., in its capacity as the Prepetition Agent and/or the Exit Facility Agent, nor the Prepetition Lenders, nor the Exit Facility Lenders control the ERG Plan Trust, the ERG Plan Trustee, the Debtors, or the Reorganized Debtors. Further, the ERG Plan Trust is not a joint venture with CLMG Corp., the Prepetition Lenders, or the Exit Facility Agent.

The Exempt Assets Trust

66. The Exempt Assets Trust Declaration, substantially in the form filed as a Plan Document, is hereby approved and shall be fully enforceable according to its terms.

67. The Exempt Assets Trust shall be administered initially by Jason Searcy, whose appointment is hereby approved. The terms of the Exempt Assets Trustee's compensation are disclosed in the Plan Supplement and are hereby approved. The Exempt Assets Trustee shall have all powers, rights, duties and protections afforded the Exempt Assets Trustee under the Plan and any applicable Plan Document, including the Exempt Assets Trust Declaration.

68. The Exempt Assets Trustee shall have the power to administer the assets of the Exempt Assets Trust, including, without limitation, prosecution of the Nabors Lawsuit, in a manner consistent with the Exempt Assets Trust Declaration and the Plan, and the Exempt Assets Trustee shall be the Estate representative designated to prosecute any and all Transferred Causes of Action.

69. On the Effective Date, the Exempt Assets, including, without limitation, the Nabors Lawsuit, and the Exempt Assets Trust Advance shall vest in the Exempt Assets Trust, free and clear of any and all Liens, Claims and other interests, exclusively for the benefit of the holders of Exempt Assets Trust Beneficial Interests on the terms and conditions set forth in the Plan, the Approved Settlement and Transaction Support Agreement and the Exempt Assets Trust Declaration. Without limiting the generality of the foregoing, on the Effective Date, pursuant to sections 1123(b)(2) and 1123(b)(3) of the Bankruptcy Code, the purchase and sale agreement underlying the Nabors Lawsuit, all ancillary agreements related thereto, and all of the rights of the Debtors thereunder shall be deemed assumed, assigned, and transferred to the Exempt Assets Trust in compliance with Section 365 of the Bankruptcy Code free and clear of all Liens, Claims and other interests and shall be fully available to the Exempt Assets Trustee for the purpose of prosecuting the Nabors Lawsuit, provided, however, that nothing in this provision shall be construed as a judicial determination of (a) the existence or nonexistence of any default under the purchase and sale agreement underlying the Nabors Lawsuit and any ancillary agreements related thereto; (b) the allowance or disallowance of claims held by Nabors arising from the events that occurred in connection with such purchase and sale agreement and any ancillary agreements related thereto; (c) the cure amount owed by the Debtors as a result of assuming such purchase and sale agreement and any ancillary agreements related thereto; or (d) whether or not the underlying purchase and sale agreement and any ancillary agreements related thereto have already been terminated.

Executory Contracts and Unexpired Leases

70. Except as otherwise provided for in the Plan, on the Effective Date, all executory contracts and unexpired leases of the Debtors shall be, and hereby are, assumed or rejected in accordance with Article XII of the Plan.

71. The assumption of each of the executory contracts and unexpired leases that is designated to be assumed as set forth in the Schedule of Assumed Executory Contracts and Unexpired Leases or as otherwise designated as being assumed in Section 12.1 of the Plan and for which no timely objection was filed as required by Section 12.1(b) of the Plan is approved pursuant to sections 365(a) and (b) of the Bankruptcy Code, is in the best interests of the Debtors and the Estates, and any objections to such assumption are hereby deemed waived in all respects.

72. Any Cure Claims under each executory contract and unexpired lease to be assumed under the Plan shall be satisfied pursuant to section 365(b)(1) of the Bankruptcy Code: (i) by payment of the cure amount listed on the Schedule of Assumed Executory Contracts and Unexpired Leases in Cash on the Effective Date by the Disbursing Agent; or (ii) on such other terms as agreed to by the Disbursing Agent and the non-Debtor counterparty to such executory contract or unexpired lease.

73. The rejection of the Rejected Contracts, including, without limitation, each of the executory contracts and unexpired leases that is designated to be rejected as set forth in the Schedule of Rejected Executory Contracts and Unexpired Leases, is approved pursuant to sections 365(a) of the Bankruptcy Code. Such rejected executory contracts and unexpired leases are burdensome to the Estates and rejection thereof is in the best interests of the Debtors and their Estates.

74. Inclusion of a contract, lease or other agreement on the Schedule of Rejected Executory Contracts and Unexpired Leases, or omission of a contract, lease or other agreement from the Schedule of Assumed Executory Contracts and Unexpired Leases and the Schedule of Rejected Executory Contracts and Unexpired Leases, constitutes adequate and sufficient notice that (i) any Claims arising thereunder or related thereto shall be treated as Unsecured Claims under the Plan, and (ii) the Debtors are no longer bound by, or otherwise obligated to perform, any such obligations, transactions, or undertakings relating thereto or arising thereunder.

75. The listing of a document on the Schedule of Assumed Executory Contracts and Unexpired Leases or the Schedule of Rejected Executory Contracts and Unexpired Leases shall not constitute an admission by the Debtors that such document is an executory contract or that the Debtors have any liability thereunder.

76. Claims created by the rejection of executory contracts and unexpired leases or the expiration or termination of any executory contract or unexpired lease prior to the Confirmation Date shall be Class 5 - Unsecured Claims and must be filed with the Bankruptcy Court and served on the Debtors or, if after the Effective Date, the Reorganized Debtors, the Exempt Assets Trustee, and the ERG Plan Trustee, as provided in the Plan.

77. Any such Claims for which a proof of claim is not filed and served by the deadlines set forth in the Plan will be forever barred from assertion and shall not be enforceable against the Debtors, their Estates, or the Exempt Assets Trust. Except as otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided in the Plan and herein shall be treated as Unsecured Claims under the Plan subject to objection by the Disbursing Agent.

Releases and Exculpations

78. The releases and exculpations set forth in Sections 7.5(g), 7.6(i), 8.2, 14.1, 14.2, 14.3, 14.4, 14.5, and 14.6 of the Plan are hereby incorporated herein by reference and shall be, and hereby are, approved as set forth herein, and shall be effective without further action upon the occurrence of the Effective Date. Notwithstanding the foregoing, Section 14.3 of the Plan shall not apply to RCPTX except with respect to any act taken or omitted to be taken in the Chapter 11 Case, including in connection with or related to the Plan, the exhibits to the Plan and the Plan Supplement, the Disclosure Statement, any transaction proposed in connection with or related thereto, or any contract, instrument, release or other agreement or document created or entered into in connection therewith; provided, however, that the foregoing provisions will have no effect on: (a) the liability of any Person that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan or (b) the liability of any Person that would otherwise result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct.

79. The exculpation provided in Section 14.3 of the Plan is approved but should be construed, and will only be effective, to the extent that it is consistent with the applicable provisions of the Bankruptcy Code and case law in the Fifth Circuit. In addition, the exculpation provided in Section 14.3 of the Plan shall be limited to acts which occurred after the Petition Date. Any claims made against Exculpated Parties for acts described in Section 14.3 of the Plan shall be filed in the United States Bankruptcy Court for the Northern District of Texas, and this Court retains jurisdiction to consider same.

80. As of the Effective Date, for good and valuable consideration, the Debtors shall and shall be deemed to release and forever waive and discharge any and all Lambert Road Avoidance Actions.

81. Notwithstanding anything else contained in the Plan or this Confirmation Order, including any release or exculpation set forth in the Plan or herein, but subject to the terms of the Restructuring Support Agreement, the rights of the Prepetition Agent and the Prepetition Lenders under applicable law to enforce their respective rights under, in connection with, or related to the Prepetition Loan Documents against non-Debtor parties shall be unaffected by the Plan, this Confirmation Order, or the Amended and Restated Prepetition Loan Documents and nothing contained in or caused by the Plan, this Confirmation Order, or the Amended and Restated Prepetition Loan Documents shall serve as a defense for or discharge or release of any non-Debtor parties or their assets, including the Wood Parties and RCPTX, in any action to enforce the rights of the Prepetition Agent or the Prepetition Lenders against such non-Debtor parties or assets held by non-Debtors parties. Without limiting the generality of the foregoing, the reinstatement of the Prepetition Loan Documents pursuant to the terms of the Amended and Restated Prepetition Loan Documents shall not (i) serve to cure any defaults under the Prepetition Loan Documents or otherwise as to any non-Debtor parties or their assets (including the Wood Parties and RCPTX); or (ii) impair, limit, or otherwise modify any guaranties, mortgages, security documents, or other documents executed by Scott Y. Wood relating to or otherwise in respect of the Prepetition Loan Documents, but subject to the Restructuring Support Agreement. Further, the enforcement of any Liens granted under the Prepetition Loan Documents against any non-Debtor parties shall not entitle the Reorganized Debtors to assert any defense against the

Prepetition Agent or the Prepetition Lenders under Section 726 of the California Code of Civil Procedure or any similar statute.

Retention of Jurisdiction

82. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, the Bankruptcy Court shall retain and shall have jurisdiction over any matter: (i) arising under the Bankruptcy Code; (ii) arising in or related to the Chapter 11 Case, the Plan, or this Confirmation Order; or (iii) that relates to the matters set forth in Article XIII of the Plan.

Effect of Confirmation

83. The rights afforded in the Plan and the treatment of all Claims and Membership Interests in the Plan shall be in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever against the Debtors, the Estates, or any of their Assets. Except as otherwise provided in the Plan or this Confirmation Order, on the Effective Date, all Claims against the Debtors and the Debtors in Possession shall be satisfied, discharged, and released in full. Except as otherwise provided in the Plan or this Confirmation Order, all Persons shall be precluded and forever barred from asserting against the Debtors, the Estates, the Reorganized Debtors, the Assets, or the Exempt Assets Trust any Claims or Causes of Action arising from or based upon any event, occurrence, condition, thing, act, omission, transaction, or other activity of any kind or nature that occurred or came into existence prior to the Effective Date, whether or not the facts of or legal bases therefor were known or existed prior to the Effective Date and all such Claims and Causes of Action shall be automatically and forever discharged.

84. Except as set forth in Section 4.1(b) of the Plan, or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and

concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, Liens against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtors and their successors and assigns. For the avoidance of doubt, and without limiting the generality of the foregoing, the following Liens shall be unaffected by the Plan and Confirmation Order: (i) the Prepetition Facility Liens; and (ii) the DIP Liens, which, in the case the of the Liens identified in the foregoing clauses (i) and (ii), are legal, valid, enforceable, first-priority, non-avoidable, and not subject to contest, avoidance, attack, offset, re-characterization, subordination or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise, provided, that, upon the occurrence of the Effective Date, (i) the Prepetition Liens and the DIP Liens in the Exempt Assets only shall be waived and released by operation of Section 4 of the Approved Settlement and Transaction Support Agreement in accordance with the terms thereof; and (ii) the Exit Facility Liens shall attach to the Reorganized Debtors' Assets in accordance with the terms of the Exit Facility Loan Documents.

85. Except as otherwise provided in the Plan or this Confirmation Order, on the Effective Date, the Debtors and their Estates shall be deemed fully discharged and released from any and all Claims, including, but not limited to, demands and liabilities that arose before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), and 502(i) of the Bankruptcy Code, whether or not (i) a proof of claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code; (ii) a Claim based upon such debt is allowed under section 502 of the Bankruptcy Code; or (iii) the holder of a Claim based upon such debt

has accepted the Plan. Except as otherwise provided in the Plan or this Confirmation Order, this Confirmation Order shall be a judicial determination of discharge of all liabilities of the Debtors and their Estates to the extent provided in the Plan and this Confirmation Order. As provided in section 524 of the Bankruptcy Code, such discharge shall void any judgment against the Debtors and their Estates to the extent it relates to a discharged Claim, and operates as an injunction against the prosecution of any action against the Debtors, their Estates or their Assets to the extent it relates to a discharged Claim.

86. Pursuant to section 1146 of the Bankruptcy Code, the issuance, transfer, or exchange of notes under the Plan, the creation of any mortgage, deed of trust, lien, pledge or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax to the fullest extent provided in section 1146(a) of the Bankruptcy Code. 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(a) 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. To effectuate the terms of this Confirmation Order and Section 15.7 of the Plan, this Bankruptcy Court may enter any order necessary or appropriate to implement Section 15.7 of the Plan.

Injunctions

87. **On the Effective Date, all Persons who have been, are, or may be holders of Claims against or Membership Interests in the Debtors shall be permanently enjoined from**

taking any of the following actions against or affecting the Reorganized Debtors, the Debtors, the Estates, the Assets, the Disbursing Agent, the ERG Plan Trust, the Exempt Assets Trust, or any of their respective current or former members, directors, managers, officers, employees, agents, trustees, professionals or successors and assigns (other than Scott Y. Wood and his non-Debtor Affiliates) or their respective assets and property with respect to such Claims or Membership Interests (other than actions brought to enforce any rights or obligations under the Plan and other than with respect to the Prepetition Facility Claims):

- i. commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, all suits, actions, and proceedings that are pending as of the Effective Date, which must be withdrawn or dismissed with prejudice);**
- ii. enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order;**
- iii. creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance; and**
- iv. asserting any setoff, right of subrogation or recoupment of any kind; provided, that any defenses, offsets or counterclaims which the Debtors may have or assert in respect of the above referenced Claims are fully preserved in accordance with Section 15.11 of the Plan.**

88. This Confirmation Order enjoins permanently the assertion or prosecution by any Person, whether directly, derivatively or otherwise, of any Claims released pursuant to the Plan.

89. Nothing contained in Section 14.7 of the Plan shall affect the rights of (i) the Exempt Assets Trust from asserting, prosecuting, or enforcing any judgment obtained in respect of any Transferred Cause of Action; or (ii) the Prepetition Agent and the Prepetition Lenders from asserting, prosecuting, or enforcing against any non-Debtor party any rights in respect of or

relating to the Prepetition Loan Documents, including rights against or in respect of the RCPTX Royalty Interest and/or Scott Y. Wood in respect of any and all associated guaranties and mortgages, subject to the terms of the Restructuring Support Agreement.

Special Provisions Regarding Resolution of the Objections

90. The following provisions reflect the consensual resolution of the Objections raised prior to the deadline for objecting to the Plan:

A. With reference to (a) the objection to the Plan filed by the Texas Comptroller of Public Accounts (the "Comptroller") [Docket No. 572] and (b) the objection to the Plan filed by Galveston County, Harris County, and Orange County (collectively, the "Counties") [Docket No. 582], and notwithstanding any contrary provision contained in the Plan or other provision of this Confirmation Order, nothing in the Plan or Confirmation Order shall prejudice the Comptroller or the Counties from exercising setoff rights against the Debtors or Reorganized Debtors to the extent permitted by 11 U.S.C. § 553. Further, the Allowed Claims of the Comptroller and the Counties shall include interest on such Claims pursuant to applicable non-bankruptcy law.

B. With reference to the informal objection asserted by the Department of Justice, Environmental Enforcement Section, it is agreed that nothing in this Confirmation Order or the Plan discharges, releases, resolves, exculpates, precludes, or enjoins: (i) any environmental liability to any governmental unit that is not a Claim as defined in 11 U.S.C. § 101(5); (ii) any environmental Claim of any governmental unit arising on or after the Effective Date; (iii) any environmental liability to any governmental unit on the part of any entity as the owner or operator of property after the Effective Date; (iv) any liability to the United States on the part of any person or entity other than the Debtors or Reorganized Debtors; or (v) any valid right of

setoff or recoupment of the United States. Nothing in this Confirmation Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Confirmation Order or to adjudicate any defense asserted under this Confirmation Order. Further, nothing in this Confirmation Order or the Plan discharges, releases, resolves, exculpates, precludes, or enjoins: (i) any liability to the United States that is not a Claim as defined in 11 U.S.C. § 101(5); or (ii) any Claim of the United States first arising on or after the Effective Date.

Miscellaneous Provisions

91. The stay in effect in the Chapter 11 Cases pursuant to section 362(a) of the Bankruptcy Code shall continue to be in effect until the Effective Date, and at that time shall be dissolved and of no further force or effect, subject to the injunctions set forth in this Confirmation Order, Sections 5.3 and 14.7 of the Plan and/or sections 524 and 1141 of the Bankruptcy Code; provided, however, that nothing herein shall bar the taking of such other actions as are necessary to effectuate the transactions contemplated by the Plan or by this Confirmation Order prior to the Effective Date.

92. During the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to operate their businesses as Debtors in Possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect.

93. On the Effective Date, the Committee shall dissolve automatically, and the members thereof shall be released and discharged from all duties and obligations arising from or related to their membership, provided, however, that (i) the Committee shall continue in existence and its Professionals shall continue to be retained with respect to any applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or

filed and served after the Effective Date pursuant to the terms of the Plan; and (ii) the Exempt Assets Trust shall be deemed the successor to the Committee with respect to any motions seeking to enforce the Plan and the transactions contemplated in the Plan or this Confirmation Order and any pending appeals and related proceedings. The Professionals retained by the Committee and the respective members thereof shall not be entitled to assert any Fee Claims for any services rendered or expenses incurred on behalf of the Committee after the Effective Date, except for fees for time spent and expenses incurred: (i) in connection with any applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or filed and served after the Effective Date pursuant to the terms of the Plan; or (ii) in connection with any appeal pending as of the Effective Date, including any appeal of this Confirmation Order.

94. To the extent that any provisions of this Confirmation Order may be inconsistent with the terms of the Plan or any Plan Documents, the terms of this Confirmation Order shall take precedence and be binding and conclusive, unless otherwise provided herein.

95. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 6006(d), and 7062, to the extent applicable, the Bankruptcy Court finds that there is no reason for delay in the implementation of this Confirmation Order and, thus, this Confirmation Order shall be effective and enforceable immediately upon entry.

96. Notwithstanding anything else in the Plan or this Confirmation Order, on or before November 1, 2015, the Debtors and/or the Reorganized Debtors may make a regular rent payment to the landlord in respect of the Debtors' offices located at Three Allen Center, 333 Clay Street, Suite 4400, Houston, TX 77002 (the "Houston Office"). Upon the making of such payment, the Reorganized Debtors shall be entitled to remain in possession of such premises

through November 30, 2015. Without limiting the generality of the foregoing, the Debtors or the Reorganized Debtors shall have through November 30, 2015 to assume or reject the unexpired lease in respect of the Houston Office.

97. Notwithstanding any contrary treatment contained in the Plan or Confirmation Order, and with reference to that certain Water Agreement and Grant of Easement executed on May 31, 1983 and recorded as Document 1988-015644 in the records of Santa Barbara County (the "Water Agreement") by and between Bruce Conway and ERG Operating Company (as the successors of Fulton and Gato, respectively, and each as defined in the Water Agreement), and in exchange for (i) two payments of \$1,500 each by ERG Operating to Bruce Conway and (ii) the surrender by ERG Operating to Bruce Conway of an ICE engine located on the Tognazinni lease, (a) Bruce Conway is hereby deemed to release any Claim against the Debtors' estates he may have arising from or related to the Water Agreement and (b) no further performance shall be owed under the Water Agreement by the parties thereto.

Form of Notice and Effective Date

98. The form of notice of Effective Date, attached hereto as Exhibit B, is approved and shall be published by the Debtors in the *Houston Chronicle* and the *Los Angeles Times* promptly following the occurrence of the Effective Date.

###END OF ORDER###

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