

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY

IN RE:

JW RESOURCES INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 15-60831

(Jointly Administered)

**JOINT DISCLOSURE STATEMENT PURSUANT TO SECTION 1125 OF THE  
BANKRUPTCY CODE WITH RESPECT TO THE JOINT PLAN OF ORDERLY  
LIQUIDATION OF JW RESOURCES, INC. AND ITS AFFILIATED DEBTORS UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE**

~~Paige L. Ellerman (KY Bar No. 88172)  
FROST BROWN TODD LLC  
3300 Great American Tower  
301 East Fourth Street  
Cincinnati, Ohio 45202  
Telephone: (513) 651-6800  
Facsimile: (513) 651-6981  
pellerman@fbtlaw.com~~

~~Adam R. Kegley (KY Bar No. 87494)  
FROST BROWN TODD LLC  
250 West Main Street, Suite 2800  
Lexington, Kentucky 40507  
Telephone: (859) 231-0000  
Facsimile: (859) 231-0011  
akegley@fbtlaw.com~~

~~**Counsel for the Debtors and Debtors in  
Possession**~~

T. Kent Barber, Esq. (KY Bar No. 92456)  
BARBER LAW PLLC  
2200 Burrus Drive  
Lexington, KY 40513  
Telephone: (859) 296-4372  
kbarber@barberlawky.com

W. Timothy Miller (pro hac vice admitted)  
Thomas R. Schuck (pro hac vice admitted)  
Casey Cantrell Swartz (KY Bar No. 91649)  
TAFT STETTINIUS & HOLLISTER LLP  
425 Walnut St., Suite 1800  
Cincinnati, Ohio 45202  
Telephone: (513) 357-9452  
miller@taftlaw.com  
schuck@taftlaw.com  
cswartz@taftlaw.com

**Counsel for the Official Committee of  
Unsecured Creditors of JW Resources, Inc. *et al.***

<sup>1</sup> The Debtors in these chapter 11 cases are (with the last four digits of their federal tax identification numbers in parentheses): JW Resources, Inc. (6400), Straight Creek Coal Mining, Inc. (9073), SCRB Properties, Inc. (1609), and SCRB Processing, Inc. (6470).

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**IMPORTANT: THIS DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE AMENDED ~~JOINT PLAN OF LIQUIDATION (THE "PLAN") PROPOSED BY DEBTORS AND DEBTORS IN POSSESSION JW RESOURCES, INC.; STRAIGHT CREEK COAL MINING, INC.; SCRB PROPERTIES, INC.; AND SCRB PROCESSING, INC. (the "DEBTORS")~~ AND BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS (the "~~CREDITORS' COMMITTEE~~" ~~OR AND WITH THE DEBTORS, THE "PLAN PROPONENTS~~"). PLEASE READ THIS DOCUMENT WITH CARE. THIS DOCUMENT PROVIDES INFORMATION IN SUPPORT OF THE PLAN.**

## ARTICLE I INTRODUCTION

This disclosure statement (the "**Disclosure Statement**") describes the terms and provisions of the Plan filed by the Plan Proponents in *In re: JW Resources, Inc., et al.* Case No. 15-60831 (the "**Chapter 11 Cases**") pending before the United States Bankruptcy Court for the Eastern District of Kentucky (the "**Bankruptcy Court**").

The purpose of this Disclosure Statement is to provide "adequate information" as that term is defined in section 1125 of title 11 of the United States Code (the "**Bankruptcy Code**"), to enable creditors of the Debtors whose claims or interests may be impaired under the Plan to make an informed decision whether to vote in favor, or to vote against, the Plan. A copy of the Plan is attached to this Disclosure Statement as **Exhibit A**. In case of any discrepancy between this Disclosure Statement and the Plan, the provisions of the Plan shall control. Capitalized terms used in this Disclosure Statement but not defined herein shall have the meanings ascribed to them in the Plan.

The Plan is a plan of liquidation and will be funded by the Initial Liquidating Trust Assets. The Plan also creates a Liquidating Trust, which will be the mechanism through which Claims will be adjudicated and distributions will be made as set forth in the Plan. As described more fully in this Disclosure Statement, the Debtors' Estates (defined in the Plan) will contribute all of its remaining assets as of the Effective Date (defined in the Plan) to the Liquidating Trust for the benefit of creditors of the Debtors.

The primary objectives of the Plan are: (a) to maximize the value of the recoveries to all creditor groups on a fair and equitable basis and (b) to settle, compromise or otherwise dispose of certain Claims and Interests on terms that the Plan Proponents believe are fair and reasonable and in the best interests of the Debtors' Estates.

The requirements for confirmation of the Plan, including the vote of creditors to accept the Plan and certain of the statutory findings that must be made by the Bankruptcy Court, are set forth in Article V of this Disclosure Statement.

By an order of the Bankruptcy Court dated March 4, \_\_\_\_\_, 2016 (~~a copy of which is attached hereto as Exhibit B~~), this Disclosure Statement has been approved as containing “adequate information” for creditors and equity security holders of the Debtors in accordance with section 1125 of the Bankruptcy Code. The Bankruptcy Code defines “adequate information” as “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and the history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical investor of the relevant class to make an informed judgment about the plan . . . .” 11 U.S.C. § 1125(a)(1).

This Disclosure Statement is being transmitted to certain parties for the purpose of soliciting votes on the Plan, and to others for informational purposes. The purpose of this Disclosure Statement is to provide adequate information to parties in interest so that they may make a reasonably informed decision with respect to the Plan before voting to accept or reject the Plan. **THE VOTING DEADLINE IS MARCH 29, \_\_\_\_\_, 2016 AT 5:00 P.M. (EASTERN TIME).**

THE PLAN PROPONENTS BELIEVES THAT THE PLAN IS IN THE BEST INTERESTS OF CREDITORS AND OTHER STAKEHOLDERS. ALL CREDITORS ENTITLED TO VOTE ARE URGED TO VOTE IN FAVOR OF THE PLAN BY NO LATER THAN THE VOTING DEADLINE.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN SUPPLIED BY THE DEBTORS’ PERSONNEL AND HAS NOT BEEN SUBJECT TO AN INDEPENDENT AUDIT OR REVIEW. NO REPRESENTATION CONCERNING THE DEBTORS IS AUTHORIZED OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

THIS DISCLOSURE STATEMENT AND THE OTHER MATERIALS INCLUDED IN THE SOLICITATION PACKAGE ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN. NO SOLICITATION OF VOTES MAY BE MADE EXCEPT AFTER DISTRIBUTION OF THIS DISCLOSURE STATEMENT, AND NO PERSON HAS BEEN AUTHORIZED TO DISTRIBUTE ANY INFORMATION CONCERNING THE DEBTORS OR THE PLAN OTHER THAN THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT.

## ARTICLE II BACKGROUND OF THE DEBTORS

This section of the Disclosure Statement discusses the significant events in the Chapter 11 Cases to date, including those leading up to the bankruptcy filings on June 28 and June 30, 2015 (the “**Petition Date**”). Factual information contained herein has been obtained from court filings in the Chapter 11 Cases, including, the *Declaration of Joshua Porter in Support of First Day Motions and Application*, dated July 6, 2015 (the “**Porter Declaration**”) [Docket No. 31]. The Plan Proponents does not represent or warrant that the information contained in this Disclosure Statement is free from inaccuracy. However, the Plan Proponents have-has attempted to present

the information accurately and fairly and believe the information is substantially accurate. Copies of all relevant court papers are on file with the Bankruptcy Court.

## 2.1 History and Events Leading to Bankruptcy

### I. THE DEBTORS' BUSINESSES

#### a. Coal Operations

The Debtors ~~were~~ ~~are~~ U.S. producers of thermal coal with mineral reserves, mining operations and coal properties located in the Central Appalachian (“CAPP”) regions of Kentucky. By and/or through these operations, the Debtors supplied high quality coal primarily to ~~two~~ ~~one~~ customers.

JW Resources, Inc. (“**JW Resources**”) is the parent and sole shareholder of SCR Properties, Inc. and SCR Processing, Inc., which were formed to hold certain mining leases ~~and are inactive~~, as well as Straight Creek Coal Mining, Inc., ~~which is active and operates~~ coal mines, a preparation plant, and a rail loadout.

JW Resources acquired its assets and business operations from Xinerger Corp. in February 2013 (the “**Straight Creek Acquisition**”) for the purchase price of \$47,200,000. These assets and business operations of the Debtors comprise what is known as the “Straight Creek” operations located in Bell, Leslie and Harlan Counties, Kentucky, and the “Red Bird” operations located in Bell, Leslie, Knox, and Clay Counties, Kentucky. JW Resources, through its subsidiaries, leases or owns mineral rights to approximately 26,610 acres.

Prior to the Petition Date, the Debtors terminated a majority of their workforce. As of the Petition Date, the Debtors employed approximately five (5) employees. None of the employees are unionized.

For the fiscal year ending December 31, 2014, the Debtors estimate sales of 725 thousand tons of coal, of which almost all was produced by the Debtors. These sales resulted in \$52 million of revenues, \$2 million of adjusted EBITDA and a net loss of \$24 million. These figures are unaudited and do not include certain audit adjustments that have yet to be recorded.

#### b. Corporate Structure

JW Resources is majority owned by Bayside JW Investors, LLC (“**Bayside**”), which owns 74.4% of the outstanding shares of JW Resources. Balantrove Acquisition Company No. 1 LLC owns 18.6% of the outstanding shares of JW Resources. A series of other co-investors own 7.0% of the remaining shares of JW Resources. Each of the Debtors was incorporated in the Commonwealth of Kentucky on November 29, 2012. As of date of the Porter Declaration, the Board of Directors of JW Resources consisted of Mr. Lawrence M. Clark, Jr. (“**Mr. Clark**”), Mr. Joshua Porter (“**Mr. Porter**”), Mr. Brett Craig (“**Mr. Craig**”) and Mr. John Bolduc (“**Mr. Bolduc**”). The Boards of Directors of the Debtors, other than JW Resources, are identical and

consist of: 1) Mr. Clark, 2) Mr. Porter, and 3) Mr. Craig. Mr. Clark also previously served as the President and CEO of the Debtors.

### **c. Debt Structure**

The Debtors have approximately \$80 million of liabilities, of which approximately \$9.5 million is secured debt owed to GB Credit Partners, LLC (“**GB Partners**”) and approximately \$55 million is secured debt owed to Bayside. Komatsu Financial Limited Partnership and Bill Miller Equipment Sales, Inc. also purport to have liens on certain equipment owned by Debtor Straight Creek Coal Mining, Inc. On Friday, May 15, 2015, a tax lien was filed against the Debtors in Bell County, Kentucky in the amount of approximately \$405,000. The remaining balance of the Debtors’ obligations is comprised of unsecured claims.

#### **i. Secured Debt**

##### **1. JW Resources**

JW Resources and its wholly-owned subsidiaries, as borrowers, entered into a Credit Agreement dated February 1, 2013, which was amended and restated on January 30, 2014 (as amended, modified and/or restated from time to time, the “**Straight Creek Bayside Loans**”), with Bayside, as administrative agent and lender. The Straight Creek Bayside Loans provided for up to \$60 million in financing: a \$15 million revolving loan facility, and a \$37 million term loan. As of the Petition Date, approximately \$55 million is outstanding on the Straight Creek Bayside Loans. The proceeds of the Straight Creek Bayside Loans were used to fund the Straight Creek Acquisition, to provide working capital and to fund general corporate purposes. The Straight Creek Bayside Loans are secured by a lien on substantially all of the assets of JW Resources and its wholly-owned subsidiaries.

In addition, JW Resources and its wholly-owned subsidiaries, as borrowers, entered into a Credit Agreement dated January 30, 2014 (as amended, modified and/or restated from time to time, the “**GB Loans**”), with GB Partners, as administrative agent, and 1903 Onshore Funding, LLC, as lender. The GB Loans provided for up to \$14.9 million in financing: a \$5.5 million revolving loan commitment, and a \$9.4 million term loan commitment. As of the Petition Date, approximately \$9.5 million is outstanding on the GB Loans. The proceeds of the GB Loans were used for the refinancing of a portion of the borrowers’ existing indebtedness, to pay certain transaction costs, related fees and expenses, to pay certain management and collateral monitoring fees, to provide working capital and to fund general corporate purposes. The GB Loans are secured by the same collateral securing the Straight Creek Bayside Loans – substantially all of the assets of JW Resources and its wholly-owned subsidiaries.

Bayside, GB Partners, and JW Resources and its wholly-owned subsidiaries are parties to a First Lien/Second Lien Subordination and Intercreditor Agreement dated January 30, 2014 (the “**Intercreditor Agreement**”). The Intercreditor Agreement provides that the GB Loans are senior to the Straight Creek Bayside Loans in terms of lien priority and right to payment. The Intercreditor Agreement also provides that Bayside is deemed to consent to any use, sale, or lease of cash collateral and debtor-in-possession financing, provided that GB Partners has consented to such

use, sale, lease or financing, and such use, sale, lease or financing meets certain criteria laid out in the Intercreditor Agreement, including the requirement that any liens securing debtor-in-possession financing be pari passu with or superior to the liens securing the GB Loans.

## **ii. Unsecured Debt**

As of the Petition Date, the Debtors owe unsecured obligations in amounts that [have been will be disclosed in the Debtors' Schedules and Statements of Financial Affairs, and are more fully explained in Section 2.2 below.](#)

## **II. CIRCUMSTANCES GIVING RISE TO CHAPTER 11 CASES**

### **a. Nationwide Issues in the Coal Industry**

Leading up to and following the Straight Creek Acquisition in February 2013, there has been a decrease in the demand for CAPP coal, driven primarily by three factors: (i) increased switching by utilities from utilizing coal-fired power plants to utilizing natural gasfired power plants due to depressed natural gas prices caused by the substantial increase in production from shale formations utilizing new fracking and horizontal drilling techniques, (ii) decreased power production from older coal plants that will be forced to retire as a result of the inability to economically justify the cost of complying with Environmental Protection Agency regulations; and (iii) increased ability of power plants that have historically burned CAPP coal to burn a greater mix of higher sulfur Illinois Basin (ILB) coal due to the installation of newly required environmental controls.

During the period from February 2013 through April 2015, the spot price of coal per ton has decreased by 26%. All these factors contributed to the Debtors' inability to service the GB Loans and Bayside Straight Creek Loans in late 2014.

### **b. Debtors' Extrajudicial Efforts to Restructure**

The Debtors' financial distress and liquidity challenges began in the second half of 2014, when the Debtors' production levels and production costs per ton were significantly worse than projected, leading to financial covenant and other defaults under the Debtors' various loan agreements. As a result, in early 2015, the Debtors engaged Jeff Wilson of Wilson Energy Advisors to consult with the Debtors to develop a business and mining plan to attempt to address the production and cost issues.

The Debtors were struggling to maintain their financial commitments under various coal leases because the terms of these leases did not reflect the Debtors' current production levels and the current market conditions. Despite their significant efforts, the Debtors experienced production shortfalls that were inconsistent with their business operation projections as well as internal business challenges. For the months ended May 2015, the Debtors' coal production volume was 39% below levels in the Debtors' financial projections provided to GB Partners in



July 2014, resulting in the Debtors' adjusted EBITDA being approximately 75% below forecasted levels.

Additionally, the Debtors experienced losses of employees holding key financial positions, with the resignation of their Controller during their efforts to restructure out of Court as well as the retention of a new Chief Financial Officer for only a four month period. These employee turnover issues, combined with the impact of lower demands of and competitive alternatives to coal, have had a direct impact on the Debtors' sustainability.

Because of the negative factors described above, the Debtors were unable to obtain additional funding from their existing secured lenders or equity holders. With existing trends in the coal industry, obtaining additional funding from sources other than the Debtors' existing lenders was highly unlikely.

In order to maximize the value of the Debtors' assets for the benefit of all stakeholders, the Debtors retained Energy Ventures Analysis, Inc. ("EVA") as their investment bankers to pursue strategic alternatives, including a sale of substantially all of the assets of the Debtors as part of the Chapter 11 Cases.

## 2.2 Chapter 11 Process

### *Commencement of Cases*

The Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code on the Petition Date. Upon filing, the Debtors continued in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

### *DIP Financing and Adequate Protection*

On July 13, 2015, the Bankruptcy Court entered an interim order [Docket No. 88] that, among other things: (1) authorized the Debtor to obtain post-petition financing up to the maximum aggregate amount of \$1,400,000; (2) grant related liens and superpriority claims to the post-petition lenders, (the "**Senior DIP Lenders**") (3) authorized the Debtors to use cash collateral in accordance with the terms of the interim order; and (4) authorized the Debtors to provide adequate protection to certain secured parties. The Bankruptcy Court entered a final order on, among other things, cash collateral and post-petition financing (the "**Cash Collateral Order**") on August 5, 2015. [Docket No. 183].

### *First Day Motions*

Soon after the Petition Date, the Debtors filed a number of motions and other pleadings (collectively, the "First Day Motions"), the most significant of which are described below. The First Day Motions were proposed to ensure an orderly transition into Chapter 11. The First Day Motions included:

- a motion to pay prepetition wages and other benefits to the Debtors' employees [Docket No. 18];
- a motion relating to the continued use of the Debtor's existing cash management system, bank accounts, business forms and investment and deposit guidelines [Docket No. 10];
- a motion to establish procedures for determining adequate assurance for the provision of utility services [Docket No. 14];
- a motion to pay certain prepetition sales, use and franchise taxes [Docket No. 11];
- a motion to continue and renew their surety bond programs [Docket No. 13];
- a motion to continue insurance coverage entered prepetition and maintain post-petition financing of insurance premiums [Docket No. 12].

*Appointment of Official Committee of Unsecured Creditors*

On July 8, 2015, the United States Trustee appointed three general unsecured creditor representatives to serve on the Creditors' Committee [Docket No. 38]. [On July 15, 2015, the United States Trustee reconstituted the Creditors' Committee and added two additional unsecured creditors \[Docket Number 96\].](#)

The current professional advisors to the Creditors' Committee are as follows:

T. Kent Barber, Esq. (KY Bar No. 92456)  
BARBER LAW PLLC  
2200 Burrus Drive  
Lexington, KY 40513  
Telephone: (859) 296-4372  
kbarber@barberlawky.com

-and-

W. Timothy Miller (pro hac vice admitted)  
Thomas R. Schuck (pro hac vice admitted)  
Casey Cantrell Swartz (KY Bar No. 91649)  
TAFT STETTINIUS & HOLLISTER LLP  
425 Walnut St., Suite 1800  
Cincinnati, Ohio 45202  
Telephone (513) 357-9452  
[cswartz@taftlaw.com](mailto:cswartz@taftlaw.com)

*Retention of Professionals*

The Debtors have retained a number of professionals to assist in the administration of this Chapter 11 Cases and related matters. On August 4, 2015, the Bankruptcy Court authorized Debtors to retain Frost Brown Todd LLC as bankruptcy counsel [Docket No. 174]. Pursuant to a final orders dated August 4, 2015 the Bankruptcy Court authorized the Debtors to retain Energy Ventures Analysis, Inc. as sale advisor [Docket No. 173] and David Stetson as senior consultant [Docket No. 176].

*Operations During Bankruptcy*

The Debtors did not conduct mining operations during the course of the bankruptcy.

*Sale of Assets*

The Debtors pursued a sale of their assets pursuant to section 363 of the Bankruptcy Code pursuant to Bankruptcy Court-approved sale and bidding procedures. At the conclusion of an auction beginning on September 18, 2015, the Stalking Horse Bidder was determined to be the highest bidder. To dispose of the Debtors' heavy equipment and vehicles, on August 21, 2015, the Court entered an order approving the sale and an order granting the Debtor the authority to enter a contract with Ritchie Brothers for the liquidation of the Debtors' non-mining assets [Docket No. 229].

*Rejection of Unexpired Leases of Nonresidential Property*

On October 8, 2015, the Court entered an order [Docket No. 379] authorizing the Debtors to reject certain unexpired leases of nonresidential property and executory contracts not purchased by the Stalking Horse Purchaser.

*Claims Process and Claims Bar Date*

On July 14, 2015, the Debtors filed consolidated ~~their~~ Schedules, identifying the assets and liabilities of the Estates [Docket No. 92]. The Debtors subsequently submitted separate Amended Schedules in each of the Bankruptcy Cases on August 6, 2015 [Docket No. 192; Case No. 15-60821, Docket No. 42; Case No. 15-60832, Docket No. 29; Case No. 15-60835, Docket No. 29]. Pursuant to an order entered November 20, 2015 (the "Bar Date Order") [Docket No. 418] the Bankruptcy Court fixed the following Bar Dates for the filing of proofs of Claim against the Debtors in the Chapter 11 Cases: (1) December 21, 2015 as the general Bar Date for all Claims, except as noted below.

(i) the Bar Date does not apply to the filing of applications by professionals for approval and allowance of fees and expenses; and

(ii) any claim or interest listed in the Schedules that is not scheduled as disputed, contingent or unliquidated.

As of the date of this Disclosure Statement, approximately one hundred and twenty-nine (129) ~~sixty-six (66)~~ Claims have been scheduled or filed against the Debtors totaling approximately \$370,393,018.2597,929,340. The Debtors believe that it has valid objections to many of the Claims that have been filed, and thus, the ultimate allowed amount of such Claims will be significantly less than the asserted amounts. For an estimate of the ultimate allowed amount of Claims in each Class, see Article III.

An in-depth analysis of the Claims filed has not yet been conducted but there are likely objections to such Claims on a number of grounds, including, among others, that such Claims: (1) are duplicative of other Claims asserted against the Debtors; (2) have been amended and

superseded by subsequently filed Claims; (3) overstate the Debtors' liability; (4) are not supported with sufficient documentation; (5) do not represent a valid obligation of the Debtors; (6) have been paid or satisfied in full; or (7) were asserted with the improper priority status.

**ARTICLE III  
OVERVIEW OF THE PLAN**

The following table classifies Claims and Interests for all purposes, including voting, confirmation and distribution pursuant to the Plan and to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

Class and Designation	Impairment	Estimated Amount of Claims	Estimated Return	Entitled to Vote
Class 1A – Gordon Brothers Secured Claim	Impaired		0%	Yes
Class 1B – Bayside Secured Claim	Impaired		0%	Yes
Class 2 – Other Secured Claim	Impaired		0%	Yes
Class 3 – Other Priority Claims	Impaired		0%-100%	Yes
Class 4 – General Unsecured Claims	Impaired		0% - 100%	Yes
Class 5 – Equity Interest	Impaired		0%	No (deemed to reject)

### **3.1 Substantive Consolidation of Debtors for Purposes of Voting, Confirmation and Distribution**

The Plan provides for substantive consolidation of the Estates for purposes of voting, confirmation, and making Distributions to the Holders of Claims under the Plan. Voting on the Plan shall be counted on a consolidated basis. On the Effective Date, and solely for purposes of voting, confirmation and making Distributions to the Holders of Claims under the Plan (a) all guarantees of any Debtor of the payment, performance or collection of another Debtor with respect to Claims against such Debtor shall be eliminated and cancelled; (b) any single obligation of multiple Debtors shall be treated as a single obligation in the consolidated Chapter 11 Cases; and (c) all guarantees or other obligations by a Debtor with respect to Claims against one or more of the other Debtors shall be treated as a single obligation in the consolidated cases. On the Effective Date, and in accordance with the terms of this Plan and the consolidation of the assets and liabilities of the Debtors, all General Unsecured Claims based upon guaranties of collection, payment or performance made by a Debtor as to the obligation of another Debtor shall be released and of no further force and effect. Except as set forth in this Section, such substantive consolidation shall not affect (a) the legal and corporate structure of the Debtors, or (b) any obligations under any leases or contracts assumed through the Plan or otherwise after the Petition Date.

Notwithstanding the substantive consolidation of the Estates for the purposes set forth herein, each Debtor shall pay all U.S. Trustee Fee Claims on all disbursements [in the ordinary course of business](#), including any Distributions or disbursements made as a result of this Plan, until the entry of a final decree in these Chapter 11 Cases, dismissal of these Chapter 11 Cases, closure of these Chapter 11 Cases, or conversion of these Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code.

### **3.2 Administrative Claims**

In full satisfaction, and settlement of and in exchange for each Allowed Administrative Claim, except to the extent that any Holder of an Allowed Administrative Claim has received payment prior to the Effective Date, agrees with the Debtors or the Liquidating Trustee, as applicable, to different treatment or as otherwise provided for in the Plan, each Holder of an Allowed Administrative Claim shall receive payment in full, in Cash, on the later of (i) the Effective Date if due on or before that date and unpaid on the Effective Date, (ii) as soon as practicable after the date upon which such Administrative Claim becomes an Allowed Claim, or (iii) such other date as may be agreed upon between the Holder of such Allowed Administrative Claim and the Liquidating Trustee.

Any Holder of an Other Administrative Claim shall, no later than thirty (30) days after the Effective Date, ~~File~~ file an application for allowance of such Other Administrative Claim incurred after the Administrative Claim Bar Date. The Holder of an Allowed Other Administrative shall payment in full, in Cash, on the later of (i) the Effective Date if due on or before that date and unpaid on the Effective Date, (ii) as soon as practicable after the date upon which such Other Administrative Claim becomes an Allowed Claim, or (iii) such other date as may be agreed upon between the Holder of such Allowed Other Administrative Claim and the Liquidating Trustee.

### 3.3 Administrative Claims Bar Date and Other Administrative Claims Bar Date

By order dated November 20, 2015, the Bankruptcy Court previously entered an Order setting December 21, 2015 at 4:00 (Prevailing Eastern Time) by which date Holders of Administrative Claims were required to file with the with the Bankruptcy Court and serve on the Debtors requests for payment, in writing, together with supporting documents, substantially complying with the Bankruptcy Code and the Bankruptcy Rules.

All Other Administrative Claims (other than as set forth herein) must be made by application ~~filed~~ with the Bankruptcy Court and served on counsel for the Debtors and or Liquidating Trustee no later than ~~thirty forty five (4530)~~ days after the Effective Date or the ~~Other~~ Administrative Claims shall be forever barred. In the event that the Liquidating Trustee objects to an Administrative Claim or Other Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim or Other Administrative Claim.

With respect to Administrative Claims and Other Administrative Claims, the last day for Filing an objection to any Administrative Claim or Other Administrative Claims will be the later of (a) 180 days after the Effective Date, (b) 90 days after the filing of such Administrative Claim or Other Administrative Claim, or (c) such other date specified in the Plan or ordered by the Bankruptcy Court.

### 3.4 Professional Fee Claims

Any Professional seeking an award by the Bankruptcy Court of an Allowed Professional Fee Claim on account of Professional Fees incurred from the Petition Date through and including the Effective Date (i) shall, no later than thirty (30) days after the Effective Date, file a final application for allowance of compensation for services rendered and reimbursement of expenses incurred through and including the Effective Date, and (ii) shall receive, as soon as reasonably practicable after such Claim is Allowed, in full settlement, and satisfaction of, and in exchange for, such Allowed Professional Fee Claims, Cash in the amount of the Allowed Professional Fee Claims; provided, that to the extent the Allowed Professional Fee Claims for any Professional exceed the amount for such Professional provided for in the Carve-Out set forth in the Cash Collateral Order, such Professional shall receive its Pro Rata Share of any Liquidating Trust Assets.

### 3.5 Priority Tax Claims

Except to the extent that an Allowed Priority Tax Claim has been paid prior to the Effective Date or unless otherwise agreed by the Liquidating Trustee and the Holder of an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive in exchange for such Allowed Priority Tax Claim: (a) payments (i) of a total value, as of the Effective Date of the Plan; (ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the Plan; (b) such other treatment in accordance with 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other treatment as may be agreed between the Holder of such Allowed Priority Tax Claim and the Liquidating Trustee.

### 3.6 U.S. Trustee Fee Claims

The Debtors or the Liquidating Trustee, as applicable, shall pay all U.S. Trustee Fees [in the ordinary course of business](#) for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first. The U.S. Trustee shall not be required to file any proof(s) of claim regarding quarterly fees.

### 3.7 Treatment of Classified Claims and Interest of the Debtors

#### (a) Gordon Brothers Secured Claims (collectively, "Class 1A Claims").

Classification: Class 1A Claims consist of all Gordon Brothers Secured Claims against the respective Debtors.

Treatment: Except to the extent that a Holder of an Allowed Class 1A Claim agrees to a less favorable treatment in exchange for each Class 1A Claim, a Holder of an Allowed Class 1A Claim shall receive (a) the proceeds of its collateral upon the liquidation of said collateral, subject to the rights of the Liquidating Trustee under the Cash Collateral Order; and (b) a first priority lien on and secured claim against Liquidating Trust Assets that are Pre-Petition Collateral or proceeds thereof or, solely to the extent of any post-petition diminution in value of the Pre-Petition Collateral. To the extent the Allowed Class 1A Claims exceed the amount of and any Pre-Petition Collateral or Post-Petition Collateral (as applicable), such Class 1A Claims shall be treated as Class 4 Claims for purposes of treatment [\(including voting on the Plan\)](#) and Distribution.

Voting: Class 1A Claims are Impaired by the Plan. Each Holder of an Allowed Class 1A Claim is entitled to vote to accept or reject the Plan.

#### (b) Bayside Secured Claims (collectively, "Class 1B Claims").

Classification: Class 1B Claims consist of the Bayside Secured Claims against the respective Debtors.

Treatment: The allowance of the Class 1B Claims will be Disputed by the Liquidating Trustee. No distributions shall be made on account of the Bayside Secured Claim unless a Final Order is entered allowing the Claim of Bayside. If the Class 1B Claims are deemed to be Allowed Claims the Allowed Class 1B Claim shall receive (a) [the proceeds of its collateral upon the liquidation of said collateral, subject to the rights of the Liquidating Trustee under the Cash Collateral Order;](#) and (b) [a second priority lien on and secured claim against Liquidating Trust Assets that are Pre-Petition Collateral or proceeds thereof or, solely to the extent of any post-petition diminution in value of the Pre-Petition Collateral.](#) ~~its Pro-Rata Share of all remaining Cash in the Debtors' bank accounts as of the Effective Date and (b) a second priority lien on and secured claim against Liquidating Trust Assets that are Pre-Petition Collateral or proceeds thereof, or, solely to the extent of any post-petition diminution in value of the Pre-Petition Collateral.~~ To the extent the Allowed Class 1B Claims exceed the amount of proceeds realized from Pre-Petition Collateral or Post-Petition Collateral, such Class 1B Claims shall be treated as Class 4 Claims for purposes [of treatment \(including voting on the Plan\) and Distribution.](#)

Voting: Class 1B Claims are Impaired by the Plan. Each Holder of an Allowed Class 1B Claim is entitled to vote to accept or reject the Plan.

(c) **Other Secured Claims (collectively, “Class 2 Claims”).**

Classification: Class 2 Claims consist of all Other Secured Claims against the Debtors.

Treatment: To the extent of the Debtors’ right, title or interest to the Assets securing such Other Secured Claims, a Holder of an Allowed Class 2 Claim shall receive (a) the amount of such holder’s Allowed Secured Claim in one Cash payment on the later of the Effective Date or the date such Claim becomes an Allowed Claim by Final Order (or as soon as reasonably practicable thereafter) or (b) such holder shall receive such holder’s Collateral on the Effective Date. Any deficiency amount related to a Class 2 Claim shall be treated as a Class 4 Allowed General Unsecured Claim. Alternatively, such Holder shall receive such other less favorable treatment as the Debtors and such holder agree upon in writing.

Voting: The Holders of Class 2 Claims are Impaired by the Plan. Each Holder of an Allowed Class 2 Claim is entitled to vote to accept or reject the Plan.

(d) **Other Priority Claims (collectively, “Class 3 Claims”).**

Classification: Class 3 Claims consist of all Other Priority Claims against the Debtors.

Treatment: Except to the extent that a Holder of an Allowed Class 3 Claim agrees to a less favorable treatment and in exchange for each Class 3 Claim, a Holder of an Allowed Class 3 Claim shall receive its Pro Rata Share of any remaining Liquidating Trust Assets after providing for the payment in full of all Allowed Secured Claims, Allowed Administrative Claims, and Allowed Professional Fee Claims.

Voting: Class 3 Claims are Impaired by the Plan. Each Holder of an Allowed Class 3 Claim is entitled to vote to accept or reject the Plan.

(e) **General Unsecured Claims (collectively, “Class 4 Claims”).**

Classification: Class 4 Claims consist of all General Unsecured Claims against the Debtors.

Treatment: Except to the extent that a Holder of an Allowed Class 4 Claim agrees to a less favorable treatment and in exchange for each Class 4 Claim, a Holder of an Allowed Class 4 Claim shall receive its Pro Rata Share of any remaining Liquidating Trust Assets after providing for the payment in full of all Allowed Secured Claims, Allowed Administrative Claims, Allowed Other Priority Claims, and Allowed Professional Fee Claims.

Voting: Class 4 Claims are Impaired by the Plan. Each Holder of an Allowed Class 4 Claim is entitled to vote to accept or reject the Plan.



(f) **Equity Interests (collectively, “Class 5 Equity Interests”).**

**Classification:** Class 5 Equity Interests consist of all Equity Interests in the Debtor JW Resources, Inc.

**Treatment:** Class 5 Equity Interests will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect.

**Voting:** The Holders of Class 5 Equity Interests are deemed to have rejected the Plan and, therefore, are not entitled to vote to accept or reject the Plan.

(g) **Reservation of Rights Regarding Claims**

Except as otherwise explicitly provided in the Plan, nothing herein shall affect the Debtors’ or the Liquidating Trustee’s rights and defenses, both legal and equitable, with respect to any Claims or Equity Interests, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

**ARTICLE IV  
EXECUTION AND IMPLEMENTATION OF THE PLAN**

**4.1 Authorization**

Upon the Effective Date, all matters provided under the Plan involving the Debtors shall be deemed to be authorized and approved without any requirement of further action by the Debtors or its shareholders, managers, or directors.

**4.2 Funding of the Plan**

The Plan shall be funded from the Debtors’ Assets and from the proceeds realized from Causes of Action. The Debtors’ Cash and the other Liquidating Trust Assets shall be used to fund the Distributions to Holders of Allowed Claims against the Debtors in accordance with the treatment of such Claims provided herein.

The majority of funds to be received by the Liquidating Trust are anticipated to come from the proceeds from Causes of Actions, all of which are expressly preserved.

**PRESERVATION OF RIGHTS OF ACTION**

Other than Causes of Action against an Entity that are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Bankruptcy Court order (including, for the avoidance of doubt, any claims or Causes of Action released pursuant to Article XI hereof), the Debtors reserve and, as of the Effective Date, assign to the Liquidating Trust, any and all Causes of Action, including without limitation any actions specifically enumerated in the Disclosure Statement. On and after the Effective Date, the Liquidating Trustee may pursue such Causes of Action in accordance with the Liquidating Trust Agreement.

Subject in all respects to Article XI of this Plan, the Debtors shall not release any Avoidance Actions, and the Liquidating Trustee shall be authorized and empowered to enforce any such Avoidance Actions on and after the Effective Date in accordance with the terms of the Plan and the Liquidating Trust Agreement.

No Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors or the Liquidating Trustee will not pursue any and all available Causes of Action against them. No preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The Debtors reserve the Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. Except as otherwise provided by the Liquidating Trust Agreement, prior to the Effective Date, the Debtors, and on and after the Effective Date, the Liquidating Trustee, shall retain and shall have, including through its authorized agents or representatives, the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court to the fullest extent permitted by section 1123 of the Bankruptcy Code and all other applicable law. Notwithstanding anything contained herein to the contrary, the settlement of Claims and Causes of Action which are expressly to be settled by confirmation of the Plan itself shall be resolved only by Confirmation of the Plan itself.

**ALL CREDITORS AND PARTIES IN INTEREST, ESPECIALLY THOSE THAT RECEIVED PAYMENTS FROM THE DEBTORS SHOULD BE AWARE THAT THE LIQUIDATING TRUSTEE MAY LIKELY SEEK TO AVOID SUCH TRANSFERS PURSUANT TO CHAPTER 5 OF THE BANKRUPTCY CODE**

While ~~neither of the Plan Proponents have~~ the Plan Proponent has not conducted a full investigation into all potential causes of actions, the Committee has discovered the following facts which may give rise to possible Claims:

**Recharacterization of Debt: Bayside JW Resources, LLC and Bayside Capital, Inc.**

~~The largest equity holder of JW Resources and Middlesboro Mining, Inc. (“MMI”), through MMI’s parent, JW Resources Holdings, Inc., (“Holdings”), is Bayside JW Investors, LLC (74.4%). The shareholders of Bayside JW Investors, LLC are H.I.G. Bayside Debt & LBO Fund II, L.P. (97.8%) and Bayside Co-Investors (2.2%). Bayside JW Resources, LLC (“Bayside Resources”), which is owned by H.I.G. Bayside Debt & LBO Fund II, L.P., purportedly loaned money to Debtors JW Resources, Inc., SCRB Properties, Inc., Straight Creek Coal Mining, Inc., and SCRB Processing, Inc. and asserts a second lien position behind GB Credit Partners, LLC (“Gordon Brothers”). Bayside Resources has filed a proof of claim in the amount of \$59 million.~~

A related entity, Bayside Capital, Inc., has filed a proof of claim for professional services in the amount of \$660,000.

~~In late 2012 and early 2013, the Debtors purchased the Straight Creek thermal coal mining assets of Xinerger, Inc. (“Xinerger”) with funds borrowed from Bayside. At the time of the Straight Creek acquisition, Bayside held \$28.6 million of Xinerger’s senior secured notes (the “Xinerger Notes”) and had recently entered into a \$20 million senior secured credit facility with Xinerger. Pursuant to the trust indenture governing the Xinerger Notes, the purchase price paid by the Debtors was required to be used by Xinerger for capital improvements within the following year or distributed to the holders of the Xinerger Notes.~~

~~On January 30, 2014, the Debtors entered into a \$14,900,000 credit agreement with Gordon Brothers consisting of a \$9,400,000 term loan (the “Term Loan”) and a \$5,500,000 revolving line of credit (the “Line of Credit”) secured by the Debtors’ equipment, inventory, and accounts receivable (collectively, the “Gordon Brothers Loan”). According to JW Resources’ Statement of Financial Affairs [Docket No. 193], the proceeds of the Term Loan were disbursed as follows:~~

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Bayside Resources – Debt Paydown	\$4,213,455
JW Resources – Incremental Cash to Balance Sheet	\$3,313,924
Gibson Dunn & Crutcher LLP (Counsel for Borrowers)	\$500,913
Accrued Bayside Capital Consulting Fee	\$466,667
Closing & Admin Fees to Gordon Brothers	\$308,000
Gordon Brothers Expenses (net of \$120,000 deposits previously paid)	\$285,280
Accrued BalanTrove Management Consulting Fee	\$116,667
Bayside Resources – Accrued Collateral Monitoring Fee	\$90,000
Frost Brown Todd LLC (Counsel for Borrowers)	\$88,856
Bayside Capital Expense Reimbursement	\$16,240

The “debt payoff” of Bayside Resources’ purported JW Resources’ debt through the Gordon Bros. Loan was used to purchase the assets that became Middlesboro Mining, Inc. (“MMI”), even though the money that constituted this purchase price represented a portion of the Term Loan proceeds placed on JW Resources’ balance sheet. In other words, Bayside purchased MMI with JW Resources’ credit, giving rise to a claim against Bayside Resources in the amount of \$4,213,455.

~~The Committee also reserves its rights as against counsel to the Debtors in all pre-petition~~

~~matters.~~

At or about the same time, Bayside purchased the assets and assumed certain liabilities of Appolo Fuels, Inc. (“**Appolo**”) and placed them in MMI. ~~As part of that transaction, an account payable of \$764,532 from Appolo to the Debtors was assumed by Holdings,<sup>2</sup> which represents a netting of a gross payable of \$1,751,884 owed to the Debtors, the difference being \$987,000 of past due royalties owed by Appolo and paid to a lessor of Appolo at closing. In other words, \$1,751,884 of the money owed to the Debtors from Appolo, which would have become a debt of MMI, was used to pay a debt of Appolo without reimbursing the Debtors for the value of the cancelled account receivable. This debt has not been repaid.~~

~~Bayside treated capital that it advanced to JW Resources as debt rather than equity. JW Resources was severely undercapitalized. The Committee believes that this debt should be recharacterized as equity, and Bayside’s refusal to inject capital led to the rupture between Larry Clark/Balantrove Acquisition and Bayside as well as JW Resources’ bankruptcy filing. Furthermore, the fact that a significant portion of the Gordon Brothers Loan was used to acquire Appolo, the assets of which were placed in MMI rather than JW Resources, suggests that Bayside also recognized that its debt was really equity, which it withdrew in order to purchase Appolo and capitalize MMI.~~

#### **Equitable Subordination: Bayside JW Resources, LLC and Bayside Capital, Inc.**

The conduct of Bayside’s officers and directors, the undercapitalization of JW Resources, the use of a portion of the Gordon Brothers Loan to purchase Appolo, the alienation of Appolo’s assets from JW Resources, the failure to repay debt owed to JW Resources from Appolo and MMI, and the cancellation of the JW Resources-MMI combination under Holdings, as well as the conduct of Josh Porter as the designated representative of JW Resources in its bankruptcy cases, all support a claim for equitable subordination of the so-called Bayside Resources debt to that of other unsecured creditors. JW Resources and MMI were operated as a common enterprise, controlled by the same shareholders and directors, with the same management, shared employees, and shared equipment. ~~The net effect, if not the intent, of the structure of these entities as it existed as of the petition date was to concentrate the debt arising from the undercapitalization and operating losses in JW Resources while preserving the value of the enterprise in MMI for Bayside. Bayside stated in a PowerPoint presentation on April 27, 2015 that it “it has evaluated a Ch. 11 filing for MMI and determined that it would not reduce the funding need nor the probability of the reclamation L/C’s being drawn. Restructuring of \$28mm contingent liability and of debt/equity structure to be pursued out of court, and to the extent not successful a filing would be revisited.” The amounts at issue are \$59 million (Bayside JW Resources, LLC) and \$660,000 (Bayside Capital, Inc.).~~

#### **Fraudulent Transfers: Bayside JW Resources, LLC, JW Resources Holdings, Inc., and Middlesboro Mining, Inc.**

<sup>2</sup>~~Holdings was established in February, 2014 to serve as the parent corporation of both JW Resources (and its subsidiaries) and MMI (and its subsidiaries). However, this reorganization was apparently never finalized in anticipation of JW Resources’ bankruptcy filing.~~

The portion of the Gordon Brothers Loan that did not benefit JW Resources and the \$1,751,884 used to pay debts of Appolo without reimbursing JW Resources for the cancelled account receivable constitute actual or constructive fraudulent transfers.

**Conversion: Bayside JW Resources, LLC, JW Resources Holdings, Inc., and  
Middlesboro Mining, Inc.**

The portion of the Gordon Brothers Loan to JW Resources that was used other than for JW Resources and the \$1,751,884 owed by Appolo for which JW Resources was not paid were converted by Bayside, Holdings, and MMI, and affords the basis for conversion claims and possibly for a demand for punitive damages.

**Breach of Fiduciary Duty: Directors and Officers**

Because all of the directors of JW Resources were also directors of one or more Bayside entities, JW Resources Holdings, and MMI simultaneously and many of the officers also performed multiple simultaneous roles, they were clearly conflicted. The information available to the Committee indicates that in all instances, these individuals preferred Bayside, Holdings, and/or MMI over JW Resources, thereby breaching their fiduciary duty to JW Resources. The situation is heightened in the case of Josh Porter, who also served as JW Resources' designated representative in the bankruptcy cases, while still serving as a director of Bayside, Holdings, and MMI. The directors and officers who may be subject to breach of fiduciary duty claims include:

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John Bolduc, Director, 1450 Brickell Avenue, 31<sup>st</sup> Floor, Miami, FL 33131;

Lawrence M. Clark, Jr., Director, 302A West 12<sup>th</sup> Street, #283, New York, NY 10014

Gordon S. Cole, Former CFO, 76 Fairway Drive, Bristol, TN 37620

Brett Craig, Director, 1450 Brickell Avenue, 31<sup>st</sup> Floor, Miami, FL 33131

Chris Halouma, Chief Financial Officer, 8331 E. Walker Springs Lane, Suite 204,  
Knoxville, TN 39723

Sean Ozbolt, Director, 10877 Wilshire Blvd., Suite 2250, Los Angeles, CA 90024

Josh Porter, Director, 600 5<sup>th</sup> Avenue, 24<sup>th</sup> Floor, New York, NY 10020

William R. Snodgrass, Chief Operating Officer, 8331 E. Walker Springs Lane, Suite 204, Knoxville, TN 39723

~~Because all of the directors of JW Resources were also directors of one or more Bayside entities, JW Resources Holdings, and MMI simultaneously and many of the officers also performed multiple simultaneous roles, they were clearly conflicted. The information available to the Committee indicates that in all instances, these individuals preferred Bayside, Holdings, and/or MMI over JW Resources, thereby breaching their fiduciary duty to JW Resources. The situation is heightened in the case of Josh Porter, who also served as JW Resources' designated representative in the bankruptcy cases, while still serving as a director of Bayside, Holdings, and MMI.~~

The Bayside Parties vehemently deny any wrongdoing and liability for the Causes of Action and have informed the Committee of their intent vigorously to defend them.

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#### 4.3 Creation of the Liquidating Trust

The Liquidating Trustee shall be ~~jointly~~ selected by the Plan Proponents by no later than ten (10) days prior to the Plan Voting Deadline. The Plan Proponents shall consult with Gordon Brothers prior to the selection of the Liquidating Trustee.

On or prior to the Effective Date, the Liquidating Trustee and the Debtors shall execute the Liquidating Trust Agreement, which shall be approved by the Confirmation Order. The Liquidating Trust shall become effective on the Effective Date. Except to the extent inconsistent with the terms of the Plan, the terms and conditions of the Liquidating Trust Agreement shall govern under the Plan.

#### 4.4 Vesting of Remaining Assets in the Liquidating Trust

Title to the Liquidating Trust Assets and all other assets of the Debtors shall automatically and irrevocably vest in the Liquidating Trustee for the benefit of the Liquidating Trust Beneficiaries upon the Effective Date.

#### 4.5 Dissolution of Committee

On the Effective Date the ~~Creditors'~~ Committee shall be deemed dissolved and subject to Section 11.03 of this Plan, its members shall be deemed released of their duties, responsibilities and obligations, provided, however, that the ~~Creditors'~~ Committee shall remain in existence with respect to (a) any Professional Fee Claims; and (b) any appeals of the Confirmation Order.

#### 4.6 Liquidating Trust and Liquidating Trustee

##### (A) Liquidating Trustee

The Committee will select a Liquidating Trustee in consultation with the Debtors. ~~The Liquidating Trustee shall be compensated as set forth in the Liquidating Trust Agreement. The Plan Proponents shall also consult with Gordon Brothers prior to the selection of the Liquidating Trustee. The Liquidating Trustee shall be compensated as set forth in the Liquidating Trust Agreement.~~

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**(B) Duties of the Liquidating Trustee**

The Liquidating Trustee's duties include:

The responsibilities of the Liquidating Trustee, which shall be discharged in accordance with the terms of the Plan and the Liquidating Trust Agreement, shall include, but not shall not be limited to, the following:

- (a) Administering, liquidating, and monetizing the Liquidating Trust Assets;
- (b) Objecting to and resolving Claims and Disputed Claims;
- (c) Investigating, pursuing, litigating, settling, or abandoning any Causes of Action which constitute Liquidating Trust Assets;
- (d) Making Distributions in accordance with the terms of the Plan and the Liquidating Trust Agreement;
- (e) Preparing and filing post-Effective Date operating reports;
- (f) Filing appropriate tax returns in the exercise of its fiduciary obligations;
- (g) Retaining such professionals as are necessary and appropriate in furtherance of its fiduciary obligations; and
- (h) Taking such actions as are necessary and reasonable to carry out the purposes of the Liquidating Trust.

To the extent necessary or appropriate, the Liquidating Trustee shall be deemed to be a judicial substitute for each of the Debtors as the party-in-interest in the Chapter 11 Cases, under the Plan or in any judicial proceeding or appeal to which a Debtor is a party, consistent with section 1123(b)(3)(B) of the Bankruptcy Code. The Liquidating Trustee may employ professionals or other persons in connection with the performance of its duties and compensate such persons for their reasonable fees and expenses ~~in accordance with section \_\_\_ of the Plan~~, including professionals previously retained by the Debtors and/or the Committee. The Liquidating Trustee may compromise or settle any Claims, Causes of Action, or other matters or disputes relating to the Remaining Assets or the Liquidating Trust without notice or Bankruptcy Court approval. The Liquidating Trustee shall have appropriate standing to seek entry of an order of the Bankruptcy Court closing the Chapter 11 Cases of the Debtors.

**(C) United States Trustee Reports**

Until a final decree has been entered closing the Chapter 11 Cases, the Liquidating Trustee shall submit all post-confirmation quarterly operating reports to the United States Trustee as required by the United States Trustee's guidelines (with a copy served on the Office of the United States Trustee) setting forth all receipts and disbursements of the Debtors. The Liquidating Trustee shall be responsible for any quarterly fees due to the United States Trustee from and after the Effective Date until the Chapter 11 Cases are closed.

**(D) Payment of Quarterly Fees**

The Liquidating Trustee shall pay any quarterly fees pursuant to 28 U.S.C. § 1930(a)(6) to the U.S. Trustee in the ordinary course of business until the Chapter 11 Cases has been converted, dismissed, or closed by the Bankruptcy Court.

**(E) Fees and Expenses**

The fees and expenses of the Liquidating Trustee shall be governed by the terms of the Liquidating Trust Agreement. In no event shall the Liquidating Trustee be required to expend its own funds. Any fees and/or expenses incurred after the Effective Date on behalf of the Liquidating Trust shall be treated in accordance with the Liquidating Trust Agreement.

**(F) Post-Effective Date Professional Fees**

Except as otherwise set forth herein, the reasonable fees and expenses of professionals representing the Liquidating Trust or Liquidating Trustee for services provided after the Effective Date may be paid by the Liquidating Trustee as provided herein without further Court approval. Provided available funds exist, payment shall be made in accordance with the procedures established in the Liquidating Trust Agreement. If there are insufficient funds available to pay all fees and expenses of professionals and compensation to the Liquidating Trustee in full, such professionals and the Liquidating Trustee shall share Pro Rata in the available funds until payment in full is made.

**(G) Liability and Indemnification**

The Liquidating Trust Protected Parties shall not be liable for any act or omission of any other Liquidating Trust Protected Parties or the member, designee, agent, or representative of such Liquidating Trust Protected Parties, nor shall such Liquidating Trust Protected Parties be liable for any act or omission taken or not taken in their capacity as Liquidating Trust Parties other than for specific acts or omissions resulting from such Liquidating Trust Protected Parties' willful misconduct, gross negligence or fraud. The Liquidating Trustee may, in connection with the performance of his, her, or its functions, and in his, her, or its sole and absolute discretion, consult with his, her, or its attorneys, accountants, financial advisors, and agents. Notwithstanding such authority, the Liquidating Trustee shall not be under any obligation to consult with his, her, or its attorneys, accountants, financial advisors, and agents, and his, her, or its determination not to do so shall not result in the imposition of liability on the Liquidating Trustee or the Liquidating Trust Protected Parties, unless such determination is based on willful misconduct, gross negligence or fraud. The Liquidating Trust shall indemnify and hold harmless the Liquidating Trust Protected



Parties from and against and in respect of all liabilities, losses, damages, claims, costs, and expenses (including, without limitation, reasonable attorney's fees, disbursements, and related expenses), which such Liquidating Trust Protected Parties may incur or to which such Liquidating Trust Protected Parties may become subject to in connection with any action, suit, proceeding, or investigation brought by or threatened against such Liquidating Trust Protected Parties arising out of or due to their acts or omissions or consequences of such acts or omissions, with respect to the implementation or administration of the Liquidating Trust or the Plan or the discharge of their duties hereunder; provided, however, that such indemnification shall be limited to the Liquidating Trust Assets and provided further that no such indemnification will be made to such Liquidating Trust Protected Parties for actions or omissions as a result of their willful misconduct, gross negligence, or fraud.

**(H) Federal Income Tax Treatment of Liquidating Trust**

The Liquidating Trust is intended to qualify as a liquidating trust pursuant to Treasury Regulation Section 301.7701-4(d) and as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a), with no objective to continue or engage in the conduct of a trade or business. In the event the Liquidating Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulations Section 301.7701-4(d), the parties to the Liquidating Trust Agreement intend that the Liquidating Trustee take such action as it shall deem appropriate to have the Liquidating Trust classified as a partnership for federal tax purposes under Treasury Regulations Section 301.7701-3 (but not a publicly traded partnership under Code Section 7704), including, if necessary, creating or converting it into a Delaware limited liability partnership or limited liability company.

For all federal income tax purposes, all parties (including, without limitation, the Debtors, the Liquidating Trustee, and the beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust as (1) a transfer by each Debtor of the Liquidating Trust Assets (subject to any obligations relating to those assets) directly to the beneficiaries in full satisfaction of the beneficiaries' claims against the Debtors and, to the extent Liquidating Trust Assets are allocable to Disputed Claims, to the Distribution Reserve Account (as defined in the Liquidating Trust Agreement), followed by (2) the transfer by such beneficiaries to the Liquidating Trust of the Liquidating Trust Assets in exchange for such beneficiaries interest in the Liquidating Trust Assets. Accordingly, the Liquidating Trust beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Liquidating Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for all state, provincial, territorial and local income tax purposes

The Liquidating Trust shall file returns for the Liquidating Trust, except with respect to the Disputed Claims Reserve, as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and in accordance with this Section of the Plan. The Liquidating Trust's taxable income, gain, loss, deduction or credit will be allocated to each holder in accordance with their relative beneficial interests in the Liquidating Trust.

As soon as possible after the Effective Date, the Liquidating Trust shall make a good faith valuation of assets of the Liquidating Trust, and such valuation shall be used consistently by all

parties for all federal income tax purposes. The Liquidating Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any Governmental Unit for taxing purposes.

The Liquidating Trust shall file all income tax returns with respect to any income attributable to the Liquidating Trust Assets and shall pay any federal, state and local income taxes attributable to the Liquidating Trust Assets, based on the items of income, deduction, credit or loss allocable thereto.

The Liquidating Trust may request an expedited determination of Taxes of the Debtors or of the Liquidating Trust, including the Distribution Reserve Account, under Bankruptcy Code section 505(b) for all returns filed for, or on behalf of, the Debtors and the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust.

The Liquidating Trustee shall be responsible for filing all federal, state, local and foreign tax returns for the Debtors and the Liquidating Trust. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements.

**(I) Withholding of Tax**

The Liquidating Trustee shall be entitled to deduct any federal, state, or local withholding or other taxes from any Distributions made pursuant to the Plan. The Liquidating Trustee shall require any Liquidating Trust Beneficiary or other distributee to furnish to the Liquidating Trustee in writing his or its Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service and the Liquidating Trustee may condition any Distribution to any Liquidating Trust Beneficiary or other distributee upon receipt of such identification number and such other information or certification as the Liquidating Trustee may deem reasonably necessary to comply with applicable tax reporting and/or withholding laws or regulations. A Liquidating Trust Beneficiary that fails to provide the Liquidating Trustee with such information within thirty (30) days of such request shall be deemed to have forfeited his, her, or its right to a Distribution under the Plan.

**(J) Effectuating Documents**

The Liquidating Trustee, or such other person(s) as the Liquidating Trustee may approve pursuant to the Liquidating Trust Agreement, is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan. The Liquidating Trustee or his designee is authorized to certify or attest to any of the foregoing actions.

**ARTICLE V  
CONFIRMATION OF THE PLAN**

Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:

### 5.1 Solicitation of Votes

In accordance with sections 1126 and 1129 of the Bankruptcy Code, the Claims in Classes 1A, 1B, 2, 3, and 4 are Impaired and are entitled to vote to accept or reject the Plan. The holders of Allowed Interests in Class 5 will not receive any distributions under the Plan and are conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

As to classes of claims entitled to vote on a plan, the Bankruptcy Code defines acceptance of a plan by a class of creditors as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of claims of that class that have timely voted to accept or reject plan.

A vote may be disregarded if the Bankruptcy Court determines, after notice and hearing, that acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

Any creditor in any impaired Class (a) whose Claim has been listed by the Debtors in the Schedules filed with the Bankruptcy Court (provided that such claim has not been scheduled as disputed, contingent, or unliquidated) or (b) who filed a proof of claim, which Claim is not the subject of an objection or request for estimation is entitled to vote on the Plan. The Disclosure Statement Order describes the procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan.

### 5.2 Confirmation Hearing

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on whether the Debtors have fulfilled the Confirmation requirements of section 1129 of the Bankruptcy Code. The Confirmation Hearing has been scheduled for April 5, 2016, at 9:00 a.m. ~~p.m.~~ before The Honorable Gregory R. Schaaf, United States Bankruptcy Judge for the United States Bankruptcy Court, Eastern District of Kentucky. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing. Any objection to Confirmation must be made in writing and must specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim or Interest held by the objector. Any such objections must be Filed and served upon the persons designated in the notice of the Confirmation Hearing and in the manner and by the deadline described therein.

### 5.3 Confirmation

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the applicable requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for Confirmation are that the Plan: (a) is accepted by the requisite holders of Claims and Interests in impaired Classes of the Debtor or, if not so accepted, is “fair and equitable” and “does not discriminate unfairly” as to the non-accepting Class; (b) is in the “best interests” of each holder of

a Claim or Interest in each impaired Class under the Plan for the Debtor; (c) is feasible; and (d) complies with the applicable provisions of the Bankruptcy Code.

#### 5.4 Acceptance

Holders of Allowed Claims in Classes 1A, 1B, 2, 3, and 4 are entitled to vote to accept or reject the Plan. Holders of Interests in Class 5 will receive no distributions under the Plan and therefore are conclusively presumed to have voted to reject the Plan.

The Plan Proponents will request that the Bankruptcy Court confirm the Plan notwithstanding the deemed rejection of the Plan by Class 5, pursuant to section 1129(b) of the Bankruptcy Code.

#### 5.5 Unfair Discrimination and Equitable Tests

To obtain nonconsensual confirmation of the Plan, it must be demonstrated that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to each Impaired, non-accepting class. The Bankruptcy Code provides a non-exclusive definition of the phrase “fair and equitable.” Section 1129(b) of the Bankruptcy Code establishes “cram-down” tests for secured creditors, unsecured creditors, and equity holders, as follows:

*Secured Creditors.* Either (i) each impaired secured creditor retains its liens securing its secured claim and receives on account of its secured claim deferred cash payments having a present value equal to the amount of its allowed secured claim, (ii) each impaired secured creditor realizes the “indubitable equivalent” of its allowed secured claim, or (iii) the property securing the claim is sold free and clear of liens with such liens to attach to the proceeds of the sale and the treatment of such liens on proceeds to be provided in clause (i) or (ii).

*Unsecured Creditors.* Either (i) each impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.

*Equity Interests.* Either (i) each holder of an equity interest will receive or retain under the plan property of a value equal to the greater of the fixed liquidation preference to which such holder is entitled, or the fixed redemption price to which such holder is entitled or the value of the interest, or (ii) the holder of an interest that is junior to the nonaccepting class will not receive or retain any property under the plan.

A plan does not “discriminate unfairly” with respect to a nonaccepting class if the value of the cash and/or securities to be distributed to the nonaccepting class is equal to, or otherwise fair when compared to, the value of the distributions to other classes whose legal rights are the same as those of the nonaccepting class.

The Plan Proponents believe that the Plan is fair and equitable and does not discriminate unfairly with respect to the holders of Allowed Claims and Interests.

## 5.6 Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan not be likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successor to the Debtors (unless such liquidation or reorganization is proposed in the Plan). Because the Plan proposes a liquidation of all of its assets, for purposes of this test the Debtors have analyzed the ability of the Liquidating Trust to meet its obligations under the Plan. Based on the Debtors' analysis, the Liquidating Trust will have sufficient assets to accomplish its tasks under the Plan. Therefore, the Plan Proponents believe that liquidation pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code.

## 5.7 Best Interests of Creditors Test

Before the Plan may be confirmed, the Bankruptcy Court must find (with certain exceptions) that the Plan provides, with respect to each Class, that each Holder of a Claim in such Class either (a) has accepted the Plan or (b) will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtors liquidated under chapter 7 of the Bankruptcy Code.

In chapter 7 liquidation cases, unsecured creditors and equity interest holders of a debtor are paid from available assets generally in the following order, with no lower class receiving any payments until all amounts due to senior classes have been paid fully or payment has been provided for:

- Secured creditors (to the extent of the value of their collateral).
- Priority creditors.
- Unsecured creditors.
- Debt expressly subordinated by its terms or by order of the Bankruptcy Court.
- Equity interest holders.

The Plan is a liquidating plan. Thus, whether by the Liquidating Trust, or a chapter 7 trustee, the Debtors' Estates' assets will be liquidated. Accordingly, there is no reorganization value to be calculated, or distribution scenarios related thereto. In addition, the activities of the Liquidating Trust and the Liquidating Trustee after the Effective Date are the same ones that would be pursued by a chapter 7 trustee. However, a chapter 7 trustee may seek to charge statutory fees of up to 3% of disbursements. Additionally, it is likely that a chapter 7 trustee will retain counsel who would likely be required to spend a significant amount of time and expense becoming familiar with the case – time and expense that would not be required if the Plan is confirmed.

After careful review of the estimated recoveries in a chapter 11 liquidation scenario and a chapter 7 liquidation scenario, the Plan Proponents ~~have~~ has concluded that the recoveries to Creditors will be maximized by completing the liquidation of any remaining assets of the Debtors under chapter 11 of the Bankruptcy Code and making distributions pursuant to the Plan. The Debtors believe that the Debtors' Estates has value that would not be fully realized by Creditors in a chapter 7 liquidation primarily because, among other reasons, (i) additional administrative expenses would be incurred in a chapter 7 liquidation, specifically those of a chapter 7 trustee

charging statutory fees of up to 3% of disbursements and any costs of counsel to the chapter 7 trustee to become familiar with the facts and circumstances of this case, and (ii) the additional delay in distributions that would occur if the Debtors' Chapter 11 Cases were converted to cases under chapter 7.

## 5.8 Effects of Confirmation of the Plan

### (A) Binding Effect

On and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against, or Interest in, the Debtor whether or not the Claim or Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

### (B) Discharge

Pursuant to section 1141(d)(3) of the Bankruptcy Code, confirmation of the Plan will not discharge the Debtors; provided, however, upon confirmation of the Plan and the occurrence of the Effective Date, Creditors may not seek payment or recourse against or otherwise be entitled to any Distribution from the assets of the Debtors, the Estates or the Liquidating Trust except as expressly provided in the Plan. The Debtors, the Committee, and any other Entity soliciting acceptance of the Plan shall be entitled to the protections of section 1125(e) of the Bankruptcy Code.

### (C) Releases and Injunctions

**SUBJECT TO SECTION 11.03 BELOW, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE DEBTORS SHALL NOT RELEASE**

**(i) ANY AND ALL CAUSES OF ACTION AND ANY OTHER DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, DERIVATIVE CLAIMS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE, IN LAW, AT EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE; AND**

**(ii) ANY AND ALL AVOIDANCE ACTIONS AGAINST ANY PERSON**

### (D) Exculpation

(a) ~~Debtors' Financial Advisors~~Professionals. Les Wagner and David Stetson, each individually, ~~and~~ Energy Ventures Analysis, Inc., and Frost Brown Todd LLC and their its respective employees, officers, directors, members, successors or assigns (collectively, the "EVA Debtors' ProfessionalsParties") shall not have or incur any liability to, or be subject to any right or cause of action by, the Debtors, their bankruptcy estates, anyone acting by, on behalf of or

through the Debtors or their bankruptcy estates, the Liquidating Trustee, the Committee, any holder of a Claim or Interest, any other party in interest, or any of their respective agents, shareholders, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act or omission by ~~Mr. Wagner, Mr. Stetson and/or the EVA Parties~~ the Debtors' Professionals prior to or after the Petition Date in pursuing the interests of the Debtors and in connection with or in contemplation of the Debtors' bankruptcy filings and the Debtors' Chapter 11 bankruptcy cases; provided however, that nothing in this Plan shall release, exculpate or waive any rights, claims or causes of action belonging to the Debtors or their bankruptcy estates as against H.I.G. Bayside Debt & LBO Fund II, L.P., Bayside JW Resources, LLC, Bayside JW Investors, LLC, JW Resources Holdings, Inc., Bayside Capital, Inc., BalanTrove Management, BalanTrove Acquisition Company No. 1 LLC, any other investors in the Debtors, and any of the forgoing entities' respective agents, shareholders, officers, directors, employees, representatives, financial advisors, attorneys, affiliates, successors or assigns (collectively, the "Investor Parties"), Middlesboro Mining, Inc. and its subsidiaries (collectively, "MMI"), any and all officers, managers and directors of the Debtors, including Josh Porter, John Bolduc, Lawrence M. Clark, Jr., Gordon S. Cole, Brett Craig, Christopher Halouma, Sean Ozbolt, and William R. Snodgrass (collectively, the "Officers and Directors").

~~(b) Debtors' Counsel. Frost Brown Todd LLC and its respective employees, managers, officers, directors, successors or assigns (collectively, the "FBT Parties") shall not have or incur any liability to, or be subject to any right or cause of action by, the Debtors, their bankruptcy estates, anyone acting by, on behalf of or through the Debtors or their bankruptcy estates, the Liquidating Trustee, the Committee, any holder of a Claim or Interest, any other party in interest, or any of their respective agents, shareholders, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act or omission by the FBT Parties prior to or after the Petition Date in pursuing the interests of the Debtors and in connection with or in contemplation of the Debtors' bankruptcy filings and the Debtors' Chapter 11 bankruptcy cases; provided however, that nothing in this Plan shall release, exculpate or waive any rights, claims or causes of action belonging to the Debtors or their bankruptcy estates (i) as against the Investor Parties, MMI and the Officers and Directors; or (ii) as against FBT arising from FBT's concurrent representation of the Debtors and MMI or any of the Investor Parties.~~

~~(be) Committee and Committee Professionals. Each Committee Member, Barber Law PLLC, Taft Stettinius & Hollister LLP, and each of their respective employees, managers, officers, directors, successors or assigns (collectively, the "Committee Parties") shall not have or incur any liability to, or be subject to any right or cause of action by, the Debtors, their bankruptcy estates, anyone acting by, on behalf of or through the Debtors or their bankruptcy estates, the Liquidating Trustee, the Committee, any holder of a Claim or Interest, any other party in interest, or any of their respective agents, shareholders, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act or omission by the Committee Parties after the Petition Date in pursuing the interests of the Committee and in connection with the Debtors' bankruptcy filings and the Debtors' Chapter 11 bankruptcy cases; provided however, that nothing in this Plan shall release, exculpate or waive any rights, claims or causes of action belonging to the Debtors or their bankruptcy estates as against the Investor Parties, MMI and the Officers and Directors.~~

(E) Injunction

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES THAT: (1) ARE SUBJECT TO COMPROMISE AND SETTLEMENT PURSUANT TO THE TERMS OF THE PLAN; (2) ARE SUBJECT TO EXCULPATION PURSUANT TO SECTION 11.03 HEREOF (BUT ONLY TO THE EXTENT OF THE EXCULPATION PROVIDED IN SECTION 11.03); OR (3) ARE OTHERWISE STAYED OR TERMINATED PURSUANT TO THE TERMS OF THE PLAN, ARE PERMANENTLY ENJOINED AND PRECLUDED, FROM AND AFTER THE EFFECTIVE DATE, FROM: (A) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, INCLUDING ON ACCOUNT OF ANY CLAIMS, EQUITY INTERESTS, CAUSES OF ACTIONS, OR LIABILITIES THAT HAVE BEEN COMPROMISED OR SETTLED AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO EXCULPATED (OR THE PROPERTY OR ESTATE OF ANY ENTITY, DIRECTLY OR INDIRECTLY, SO EXCULPATED, INCLUDING THE LIQUIDATING TRUST AND THE LIQUIDATING TRUST ASSETS) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (C) CREATING, PERFECTING, OR ENFORCING ANY LIEN, CLAIM, OR ENCUMBRANCE OF ANY KIND AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (D) ASSERTING ANY RIGHT OF SETOFF (UNLESS PREVIOUSLY ASSERTED) OR SUBROGATION OF ANY KIND AGAINST ANY OBLIGATION DUE FROM THE DEBTORS OR ANY ENTITY SO EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES UNLESS SUCH ENTITY HAS TIMELY ASSERTED SUCH SETOFF RIGHT PRIOR TO CONFIRMATION IN A DOCUMENT FILED WITH THE BANKRUPTCY COURT EXPLICITLY PRESERVING SUCH SETOFF OR SUBROGATION, AND NOTWITHSTANDING AN INDICATION OF A CLAIM OR INTEREST OR OTHERWISE THAT SUCH ENTITY ASSERTS, HAS, OR INTENDS TO PRESERVE ANY RIGHT OF SETOFF OR SUBROGATION PURSUANT TO APPLICABLE LAW OR OTHERWISE; AND (E) COMMENCING OR



CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES SETTLED, OR COMPROMISED PURSUANT TO THE PLAN; PROVIDED THAT NOTHING CONTAINED IN THE PLAN SHALL PRECLUDE AN ENTITY FROM OBTAINING BENEFITS DIRECTLY AND EXPRESSLY PROVIDED TO SUCH ENTITY PURSUANT TO THE TERMS OF THE PLAN; PROVIDED, FURTHER, THAT NOTHING CONTAINED IN THE PLAN SHALL BE CONSTRUED TO PREVENT ANY ENTITY FROM DEFENDING AGAINST CLAIMS OBJECTIONS OR COLLECTION ACTIONS WHETHER BY ASSERTING A RIGHT OF SETOFF OR OTHERWISE TO THE EXTENT PERMITTED BY LAW.

**(F) Clarification**

For clarification, nothing contained in the Plan shall effectuate a release or relinquishment of any rights, claims, or Causes of Action that the Debtors, their Estates, or the Liquidating Trust may have.

**5.9 Conditions to Effective Date; Modification or Revocation of the Plan; Additional Documents**

**(A) Conditions to Effective Date**

The Plan may not be consummated unless each of the conditions set forth below has been satisfied:

- (i) The Confirmation Order shall have been entered in form and substance satisfactory to the Debtors and the Creditors' Committee;
- (ii) the Liquidating Trustee shall have been appointed and the Liquidating Trust Agreement shall have been executed and become effective; and
- (iii) The Bankruptcy Court finds that adequate information and sufficient notice of the Disclosure Statement, the Plan and the Confirmation Hearing, along with all deadlines for voting on or objecting to the Plan has been given to all relevant parties in accordance with the solicitation procedures governing such service and in substantial compliance with Bankruptcy Rules 2002(b), 3017 and 3020(b).

**(B) Modification of the Plan**

The Plan Proponents ~~jointly~~ may alter, amend, or modify the Plan under section 1127 of the Bankruptcy Code at any time prior to the Effective Date, provided that any such alteration, amendment, or modification is consistent with the terms of the Final DIP Order, the Sale Order, and the Plan. After the Effective Date, the Liquidating Trustee may institute proceedings in the

Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order, or to address such matters as may be necessary to carry out the purposes and effects of the Plan. Notwithstanding any reference herein to the forms of documents to be filed with the Bankruptcy Court prior to the Confirmation Hearing the Plan Proponent~~s~~ may make any non-material changes to such forms prior to the Effective Date.

**(C) Revocation of the Plan**

The Plan Proponent~~s~~ reserves the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to File subsequent plans of reorganization. If the Plan Proponent~~s~~ revokes or withdraws the Plan prior to the Confirmation Date, or if Confirmation or the Effective Date does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims against, or any Equity Interests in, the Debtors, or any Avoidance Actions, Litigation Rights or other claims by or against the Debtors, the Creditors' Committee or any Entity, (ii) prejudice in any manner the rights of the Debtors, the Creditors' Committee, or any Entity in any further proceedings involving the Debtors, or (iii) constitute an admission of any sort by the Debtors, the Creditors' Committee, or any other Entity.

**(D) Filing of Additional Documents**

Prior to the Effective Date, the Plan Proponent~~s~~ may file with the Bankruptcy Court such agreements or other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan that are not inconsistent with the terms of the Plan. On or after the Effective Date, the Debtors or the Liquidating Trustee may file with the Bankruptcy Court such agreements or other documents as may be necessary or appropriate to effectuate the terms and conditions of the Plan.

**ARTICLE VI  
RISK ASSOCIATED WITH THE PLAN**

HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTOR SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HERewith AND/OR INCORPORATED BY REFERENCE HEREIN), PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THESE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

### **6.1 Parties-in-Interest May Object to the Plan's Classification of Claims**

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. The Plan Proponents believe that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, the Plan Proponents cannot assure you that parties-in-interest and/or the Bankruptcy Court will reach the same conclusion.

### **6.2 The Plan Proponents May Not Be Able To Secure Confirmation of the Plan**

#### **(A) Risk of Non-Confirmation of the Plan.**

Although the Plan Proponents believe that the Plan will satisfy all requirements necessary for confirmation, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications to the Plan will not be required for confirmation or that such modifications would not necessitate the re-solicitation of votes.

#### **(B) Non-Consensual Confirmation**

The Bankruptcy Court may confirm the Plan at the Plan Proponents' request if at least one Impaired Class has accepted the Plan (such acceptance being determined without including the vote of an "insider" in such Class), and as to each Impaired Class that has not accepted the Plan, if the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting Impaired classes. The Plan Proponents believe that the Plan satisfies these requirements.

### **6.3 The Liquidating Trustee May Object to the Amount or Classification of Your Claim**

The Liquidating Trustee, as of the Effective Date, has the right to object to the amount or classification of any Claim. The estimates set forth in this Disclosure Statement cannot be relied on by any creditor whose Claim is subject to an objection, or may be objected to prior to the Claims Objection Deadline. Any such Claim holder may not receive its specified share of the estimated Distributions described in this Disclosure Statement.

### **6.4 The Liquidating Trustee May File a Lawsuit Against You**

Upon the Effective Date, all Claims and Causes of Action vest with the Liquidating Trust ~~to be liquidating Trustee~~. The Liquidating Trustee may identify and initiate a Claim or Cause of Action against you.

### **6.5 The Liquidating Trustee May Determine that the Liquidating Trust Has Insufficient Assets to Prosecute Claims or Causes of Action**

The Liquidating Trust will be funded with the Initial Liquidating Trust Assets. The Liquidating Trustee may determine at any time after the Effective Date that the Liquidating Trust

has insufficient assets to identify, initiate or prosecute Claims or Causes of Action and may abandon such Claims or Causes of Action. Such Claims and Causes of Action are anticipated to be the source of recovery for Creditors.

**6.6 The Information in This Disclosure Statement Is Based On Estimates, Which May Turn Out To Be Incorrect**

The information in this Disclosure Statement is based upon Claims reflected in the Schedules and a preliminary review of the Claims filed as of the date of this Disclosure Statement. Upon the completion of a detailed analysis of the proofs of claim, the actual amount of Claims may differ from current estimates. Further, the amounts of Disputed Claims that ultimately are Allowed by the Bankruptcy Court may be significantly more or less than the estimated amounts of such Claims. The actual aggregate amount of Allowed Claims may differ significantly from the estimates set forth in this Disclosure Statement. Accordingly, the amount of the Distributions that ultimately will be received by a particular holder of an Allowed Claim may be adversely or favorably affected by the aggregate amount of Claims ultimately Allowed.

**ARTICLE VII  
FEDERAL INCOME TAX CONSEQUENCES**

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

The following discussion summarizes some of the more significant United States federal income tax consequences of the Plan to certain holders of Allowed Claims in Class 2 and Interests. The analysis contained herein is based upon the Internal Revenue Code of 1986, as amended (the "IRC" or "Tax Code"), the Treasury Regulations promulgated and proposed thereunder (the "Regulations"), judicial decisions, and published administrative rulings and pronouncements of the Internal Revenue Service (the "IRS") as in effect on the date hereof.

Legislative, judicial, or administrative changes or interpretations enacted or promulgated after the date hereof could alter or modify the analysis and conclusions set forth below. Any such changes or interpretations may be retroactive and could affect significantly the federal income tax consequences discussed below. This summary does not address foreign, state, or local income tax, or any estate or gift tax consequences of the Plan, nor does it purport to address the federal income tax consequences of the Plan to special classes of taxpayers (such as foreign companies, nonresident alien individuals, S corporations, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, broker/dealers, and tax-exempt organizations). Accordingly, it should not be relied upon for purposes of determining the specific tax consequences of the Plan with respect to a particular holder of an Allowed Claim or Interest.

Due to the complexity of certain aspects of the Plan, some of which are discussed below, the lack of applicable legal precedent and the possibility of changes in the law, the differences in the nature of various Allowed Claims, the differences in the methods of accounting of holders of Allowed Claims or Interests, and the potential for disputes as to legal and factual matters, the federal income tax consequences described herein are subject to significant uncertainties.

THE TAX CONSEQUENCES TO HOLDERS OF ALLOWED CLAIMS OR INTERESTS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN DUE TO THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN THE LAW. NO RULING HAS BEEN OR WILL BE APPLIED FOR OR OBTAINED FROM THE INTERNAL REVENUE SERVICE WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN AND NO OPINION OF COUNSEL HAS BEEN OR WILL BE REQUESTED OR OBTAINED BY THE PLAN PROPONENTS WITH RESPECT THERETO. THIS DISCUSSION DOES NOT CONSTITUTE TAX ADVICE OR A TAX OPINION CONCERNING THE MATTERS DESCRIBED. THERE CAN BE NO ASSURANCE THAT THE INTERNAL REVENUE SERVICE WILL NOT CHALLENGE ANY OR ALL OF THE TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED, WOULD NOT BE UPHELD. ACCORDINGLY, EACH HOLDER OF AN ALLOWED CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, FOREIGN, OR OTHER TAX CONSEQUENCES OF THE PLAN.

#### **7.1 Federal Income Tax Consequences to the Debtors**

Debtors are corporations for U.S. federal income tax purposes, and upon information and belief, the Plan will have no federal income tax consequences for the Debtors.

#### **7.2 Federal Income Tax Consequences to the Holders of Interests**

Under the Plan, the holders of Interests in the Debtors will have the Interests cancelled and will not receive any payment with respect to such cancellation. Holders of Interests in the Debtors generally will recognize loss in the amount of the holder's adjusted tax basis in its Interest. The character of any recognized loss will depend upon several factors including, but not limited to, the status of the holder, the nature of the Interest in the holder's hands, the purpose and circumstances of its acquisition, the holder's holding period, and the extent to which the holder had previously claimed a deduction for the worthlessness of all or a portion of the Interest. A loss generally is treated as sustained in the taxable year for which there has been a closed and completed transaction, and no portion of a loss with respect to which there is a reasonable prospect of reimbursement may be deducted until it can be ascertained with reasonable certainty whether or not such reimbursement will be recovered. **HOLDERS OF INTERESTS IN THE DEBTORS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE RECOGNITION OF LOSS FOR FEDERAL INCOME TAX PURPOSES.**

Holders of Interests may be allocated income, gain, loss, and deductions recognized by the Debtors as a result of the implementation of the Plan. See "Federal Income Tax Consequences to

the Debtors.” The tax consequences to a holder of an Interest from such allocation will vary from holder to holder based on the individual circumstances of that holder. Accordingly, this summary does not further address the U.S. federal income tax consequences applicable to a holder of an Interest who is allocated income, gain, loss, or deductions by the Debtors. **EACH HOLDER OF AN INTEREST IN THE DEBTORS SHOULD CONSULT ITS OWN TAX ADVISOR WITH RESPECT TO THE U.S. FEDERAL INCOME TAX CONSEQUENCES TO IT OF THE IMPLEMENTATION OF THE PLAN.**

### 7.3 Federal Income Tax Consequences to Holders of Allowed Claims

The federal income tax consequences of the Plan to a holder of an Allowed Claim will depend upon several factors, including but not limited to: (i) whether the holder’s Allowed Claim (or a portion thereof) constitutes a payment for principal or interest, (ii) the origin of the holder’s Allowed Claim, (iii) the type of consideration given by the holder in exchange for the Allowed Claim, (iv) whether the holder is a resident of the United States for tax purposes (or falls into any of the special classes of taxpayers excluded from this discussion as noted above), (v) whether the holder reports income on the accrual or cash basis method, (vi) whether the holder has taken a bad debt deduction or worthless security deduction with respect to the Allowed Claim, and (vii) whether the holder receives Distributions under the Plan in more than one taxable year. **HOLDERS ARE STRONGLY ADVISED TO CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE TAX TREATMENT UNDER THE PLAN OF DISTRIBUTIONS ON ACCOUNT OF THEIR PARTICULAR ALLOWED CLAIMS.** Generally, a holder of an Allowed Claim will recognize gain or loss equal to the difference between the “amount realized” by such holder and such holder’s adjusted tax basis in the Allowed Claim. The “amount realized” is equal to the fair market value of such holder’s proportionate share of the assets transferred to the Liquidating Trust on the behalf of and for the benefit of such holder (to the extent that such assets are not allocable to any portion of the Allowed Claim representing accrued but unpaid interest (see discussion below)).

If the Liquidating Trust qualifies as a liquidating trust as defined in Treasury Regulation section 301.7701-4(d), the transfer of the Initial Liquidating Trust Assets to the Liquidating Trust by the Debtor will be treated for federal income tax purposes as a transfer of such Initial Liquidating Trust Assets to the holders of Allowed Claims to the extent they are creditor-beneficiaries, followed by a deemed transfer of such assets by such beneficiaries to the Liquidating Trust. As a result of such treatment, holders of Allowed Claims will have to take into account the fair market value of their Pro Rata share, if any, of the Initial Liquidating Trust Assets transferred on their behalf to the Liquidating Trust in determining the amount of gain (or loss) realized and required to be recognized upon consummation of the Plan. In addition, since a holder’s share of the assets held in the Liquidating Trust may change depending upon the resolution of Disputed Claims, the holder may be prevented from recognizing any loss in connection with consummation of the Plan until the time that all such Disputed Claims have been resolved. The Liquidating Trustee will provide the holders of Allowed Claims with valuations of the assets transferred to the Liquidating Trust and such valuations will be used consistently by the Liquidating Trust and such holders for all federal income tax purposes.

The character of any recognized gain or loss (e.g., ordinary income or short-term or long-term capital gain or loss) will depend upon the status of the holder, the nature of the Allowed Claim in its hands, the purpose and circumstances of its acquisition, the holder's holding period of the Allowed Claim, and the extent to which the holder previously claimed a deduction for the worthlessness of all or a portion of the Allowed Claim. **HOLDERS OF ALLOWED CLAIMS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE RECOGNITION OF GAIN OR LOSS, FOR FEDERAL INCOME TAX PURPOSES, ON THE SATISFACTION OF THEIR CLAIMS.**

In addition, holders of Allowed Claims will be taxed on their allocable shares of the Liquidating Trust's income and gain in each taxable year, whether or not they receive any Distributions from the Liquidating Trust in such taxable year. **HOLDERS OF ALLOWED CLAIMS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE POSSIBILITY OF RECOGNIZING INCOME FOR FEDERAL INCOME TAX PURPOSES WITHOUT THE RECEIPT OF CASH TO PAY THE TAXES ON SUCH INCOME.**

#### **7.4 Allocation of Consideration to Interest**

A portion of the consideration received by a holder in satisfaction of an Allowed Claim pursuant to the Plan may be allocated to the portion of such Allowed Claim (if any) that represents accrued but unpaid interest. Unless otherwise provided by applicable statute or rule, distributions under the Plan are allocated first to the principal of an Allowed Claim, then to any accrued interest. If any portion of the Distribution were required to be allocated to accrued interest, such portion would be taxable to the holder as interest income, except to the extent the holder has previously reported such interest as income.

In that event, only the balance of the distribution would be considered received by the holder in respect of the principal amount of the Allowed Claim. Such an allocation would reduce the amount of the gain, or increase the amount of loss, realized by the holder with respect to the Allowed Claim. If any such loss were a capital loss, it would not offset any amount of the distribution that was treated as ordinary interest income (except, in the case of individuals, to the limited extent that capital losses may be deducted against ordinary income).

To the extent that any portion of the distribution is treated as interest, holders may be required to provide certain tax information in order to avoid the withholding of taxes. **HOLDERS OF ALLOWED CLAIMS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE FEDERAL INCOME TAX TREATMENT OF CONSIDERATION RECEIVED IN SATISFACTION OF THEIR CLAIMS.**

### **ARTICLE VIII**

#### **ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

##### **8.1 Liquidation Pursuant to Chapter 7 of the Bankruptcy Code**

If no Chapter 11 plan can be confirmed, the Chapter 11 Cases may be converted to cases under chapter 7 of the Bankruptcy Code, in which case a trustee will be appointed to liquidate the

assets of the Debtors. It is impossible to predict precisely how the proceeds of a liquidation of the Debtors' assets under chapter 7 of the Bankruptcy Code would be distributed to the respective holders of Claims against or Interests in the Debtors. However, the Plan Proponents believes that liquidation under chapter 7 would result in, among other things, (i) smaller distributions being made to creditors than those provided for in the Plan because of additional administrative expenses attendant to the appointment of a trustee and the trustee's employment of attorneys and other professionals and (ii) additional expenses and Claims, some of which may be entitled to priority, as discussed more fully in Article III of this Disclosure Statement.

**8.2 Alternative Plan**

If the Plan is not confirmed, ~~the Debtors or~~ any other party in interest could attempt to formulate a different plan with respect to the Debtors. Such a plan would necessarily involve the orderly liquidation of the Debtors' assets. The Plan Proponents ~~have~~ has concluded that the Plan represents the best alternative to protect the interests of creditors and other parties-in-interest.

Further, the Plan Proponents believes that the Plan enables the Liquidating Trustee to maximize the value realized from the Debtor's assets and to streamline the process of distributing the proceeds of the Debtors' assets, allowing creditors to realize the highest recoveries under the circumstances. Accordingly, the Plan Proponents believes that the creditors of the Debtors will receive greater recoveries through the Plan than in a chapter 7 liquidation.

**ARTICLE IX  
CONCLUSION AND RECOMMENDATION**

The Plan Proponents believes that confirmation and implementation of the Plan is preferable to any of the alternatives described above because it will provide the greatest recoveries to holders of Claims. Other alternatives would involve delay, uncertainty, and substantial administrative costs.

**THE PLAN PROPONENTS URGE HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN TO ACCEPT THE PLAN.**

Dated: ~~January 25~~ March 4, 2016

\_\_\_\_\_ Respectfully Submitted,

JW Resources, Inc., et al.

/s/ Les Wagner Amy Brock Williams

By: Les Wagner

Individual Designated to Perform  
Duties of Debtors and  
Debtors in  
Possession Chair, Official Committee of Unsecured  
Creditors of JW Resources, Inc. et al.

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