

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

In re:	§	
	§	
VANDERRA RESOURCES, LLC,	§	Case No. 12-45137-DML-11
	§	
Debtor.	§	Chapter 11

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**DISCLOSURE STATEMENT PURSUANT TO 11 U.S.C. § 1125  
IN SUPPORT OF DEBTOR'S AND THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS' JOINT PLAN OF LIQUIDATION FOR VANDERRA RESOURCES, LLC**

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Dated: February 6, 2013

**LIST OF EXHIBITS**

- Exhibit A:** Order Approving Disclosure Statement
- Exhibit B:** Debtor's and the Official Committee of Unsecured Creditors' Joint Plan of Liquidation for Vanderra Resources, LLC
- Exhibit C:** Letter from the Committee Supporting Approval of the Plan
- Exhibit D:** Trust Agreement
- Exhibit E:** List of Transfers

THIS DISCLOSURE STATEMENT IS FILED IN SUPPORT OF THE JOINT PLAN OF LIQUIDATION FOR VANDERRA RESOURCES, LLC (THE "PLAN"), WHICH IS JOINTLY PROPOSED BY THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS (THE "COMMITTEE" AND, TOGETHER WITH THE DEBTOR, THE "PROPONENTS").

THIS DISCLOSURE STATEMENT CONTAINS A SUMMARY OF MATERIAL PROVISIONS OF THE PLAN, INCLUDING PROVISIONS RELATING TO THE PLAN'S TREATMENT OF CLAIMS AGAINST AND INTERESTS IN THE DEBTOR, THE CREATION OF A TRUST TO PROVIDE FOR THE FURTHER LIQUIDATION AND ADMINISTRATION OF ESTATE ASSETS AND THE MEANS OF IMPLEMENTATION OF THE PLAN. THE DISCLOSURE STATEMENT ALSO SUMMARIZES CERTAIN FINANCIAL INFORMATION CONCERNING THE DEBTOR AND THE CLAIMS ASSERTED AGAINST THE DEBTOR IN THE CHAPTER 11 CASE. WHILE THE PROPONENTS BELIEVE THAT THE DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS AND INFORMATION SUMMARIZED, CREDITORS AND INTEREST HOLDERS SHOULD REVIEW THE ENTIRE PLAN AND EACH OF THE DOCUMENTS REFERENCED THEREIN AND HEREIN, AND SHOULD SEEK THE ADVICE OF THEIR OWN COUNSEL AND OTHER ADVISORS BEFORE CASTING THEIR BALLOTS ON THE PLAN.

EXCEPT FOR THE INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ATTACHED HERETO, NO REPRESENTATIONS CONCERNING THE DEBTOR, THE DEBTOR'S ASSETS AND LIABILITIES, THE PAST OR FUTURE OPERATIONS OF THE DEBTOR, THE PLAN AND ITS TERMS, OR ALTERNATIVES TO THE PLAN ARE AUTHORIZED, NOR ARE ANY SUCH REPRESENTATIONS TO BE RELIED UPON IN ARRIVING AT A DECISION WITH RESPECT TO THE PLAN. ANY INFORMATION WITH RESPECT TO SUCH TOPIC AREAS THAT IS PROVIDED TO SECURE ACCEPTANCE OR REJECTION OF THE PLAN AND THAT IS NOT CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ATTACHED HERETO IS UNAUTHORIZED AND SHOULD BE REPORTED IMMEDIATELY TO THE DEBTOR'S AND THE COMMITTEE'S COUNSEL.

STATEMENTS AND FINANCIAL INFORMATION HEREIN CONCERNING THE DEBTOR, INCLUDING, WITHOUT LIMITATION, HISTORICAL INFORMATION, INFORMATION REGARDING THE DEBTOR'S ASSETS AND LIABILITIES, AND INFORMATION REGARDING CLAIMS AND INTERESTS ASSERTED OR OTHERWISE EVIDENCED IN THE DEBTOR'S CHAPTER 11 CASE, HAVE BEEN DERIVED FROM NUMEROUS SOURCES INCLUDING, WITHOUT LIMITATION, THE DEBTOR, THE DEBTOR'S BOOKS AND RECORDS, THE DEBTOR'S SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS, AND COURT RECORDS. ALTHOUGH THE PROPONENTS REASONABLY BELIEVE THAT THE HISTORICAL AND FINANCIAL INFORMATION SET FORTH HEREIN IS ACCURATE, COMPLETE AND RELIABLE, THE PROPONENTS AND THEIR PROFESSIONALS HAVE NOT TAKEN ANY INDEPENDENT ACTION TO VERIFY THE ACCURACY, COMPLETENESS OR RELIABILITY OF SUCH HISTORICAL INFORMATION AND THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. THEREFORE, NEITHER THE PROPONENTS NOR THEIR PROFESSIONALS WARRANT

OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS COMPLETE, ACCURATE AND RELIABLE. HOWEVER, THE PROPONENTS HAVE REVIEWED THE INFORMATION SET FORTH HEREIN AND, BASED UPON THE SOURCES OF INFORMATION AVAILABLE, GENERALLY BELIEVE SUCH INFORMATION TO BE COMPLETE.

UNLESS INDICATED OTHERWISE, THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF FEBRUARY 1, 2013, AND NEITHER DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE IN CONNECTION WITH THE PLAN SHALL, UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION SET FORTH HEREIN SINCE THE DATE THE DISCLOSURE STATEMENT AND THE MATERIALS RELIED UPON IN THE PREPARATION OF THE DISCLOSURE STATEMENT WERE COMPILED.

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. THIS DISCLOSURE STATEMENT CONTAINS PROJECTED FINANCIAL INFORMATION REGARDING THE DEBTOR, RECOVERIES UNDER THE PLAN, AND CERTAIN OTHER FORWARD-LOOKING STATEMENTS, ALL OF WHICH ARE BASED UPON VARIOUS ASSUMPTIONS AND ESTIMATES AS OF FEBRUARY 1, 2013, OR SUCH OTHER TIME AS IS SPECIFIED. SUCH INFORMATION WILL NOT BE UPDATED TO REFLECT EVENTS OCCURRING AFTER SAID DATE(S), AND SUCH INFORMATION IS SUBJECT TO INHERENT UNCERTAINTIES AND TO A WIDE VARIETY OF SIGNIFICANT BUSINESS, ECONOMIC AND COMPETITIVE RISKS. CONSEQUENTLY, ACTUAL EVENTS, CIRCUMSTANCES, EFFECTS AND RESULTS MAY VARY SIGNIFICANTLY FROM THOSE INCLUDED IN OR CONTEMPLATED BY SUCH PROJECTED FINANCIAL INFORMATION AND SUCH OTHER FORWARD-LOOKING STATEMENTS.

ON MARCH \_\_, 2013, AFTER NOTICE AND HEARING, THE BANKRUPTCY COURT ENTERED AN ORDER APPROVING THE DISCLOSURE STATEMENT AS CONTAINING INFORMATION OF THE KIND AND IN SUFFICIENT DETAIL TO ENABLE CREDITORS WHOSE VOTES ON THE PLAN ARE BEING SOLICITED TO MAKE AN INFORMED JUDGMENT ON WHETHER TO ACCEPT OR REJECT THE PLAN. A TRUE AND CORRECT COPY OF THE ORDER APPROVING THE DISCLOSURE STATEMENT IS ATTACHED HERETO AS **EXHIBIT "A"** AND IS INCORPORATED HEREIN FOR ALL PURPOSES. THE APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN OR A GUARANTY OF THE ACCURACY AND COMPLETENESS OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT.

NOTHING CONTAINED IN THIS DISCLOSURE STATEMENT, EXPRESS OR IMPLIED, IS INTENDED TO GIVE RISE TO ANY COMMITMENT OR OBLIGATION OF THE DEBTOR, THE COMMITTEE OR ANY OTHER PARTY, NOR SHALL IT BE CONSTRUED AS CONFERRING UPON ANY PERSON ANY RIGHTS, BENEFITS OR REMEDIES OF ANY NATURE WHATSOEVER. THE DISCLOSURE STATEMENT IS INFORMATIONAL

ONLY. ADDITIONALLY, CREDITORS AND INTEREST HOLDERS SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. EACH CREDITOR AND INTEREST HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY MATTER CONCERNING THE PLAN, THE EFFECTS OF IMPLEMENTATION OF THE PLAN AND THE VOTING PROCEDURES APPLICABLE TO THE PLAN.

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## I. INTRODUCTION

On September 9, 2012 (the "Petition Date"), Vanderra Resources, LLC (the "Debtor") filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"), thereby initiating its bankruptcy case (the "Chapter 11 Case").

On September 20, 2012, the United States Trustee for Region 6 (the "UST") filed a notice of its appointment of the Committee.

The Debtor is in possession of and manages its Estate as a debtor-in-possession. No trustee or examiner has been appointed in the Chapter 11 Case.

The Proponents hereby submit this Disclosure Statement in connection with the solicitation of votes on the Plan, which is attached hereto as **Exhibit "B"** and incorporated herein for all purposes. The Disclosure Statement is being mailed to each holder of a Claim against and each holder of an Interest in the Debtor. With respect to voting on the Plan, pursuant to the Bankruptcy Code, all Creditors holding Claims in impaired Classes 1 through 6 under the Plan are entitled to vote.

The Committee, as a joint proponent of the Plan, encourages its constituents to vote in favor of the Plan. Attached hereto as **Exhibit "C"** is a true and correct copy of the Letter from the Committee Supporting Approval of the Plan.

The Proponents believe that they have promulgated the Plan consistent with the provisions of the Bankruptcy Code. The Proponents believe that the Plan provides affected Creditors and holders of Interests with Distribution rights on account of their Claims and Interests which are at least equal to, if not greater than, what they would obtain if the Chapter 11 Case was converted to a Chapter 7 liquidation case and the Debtor's assets were liquidated within the parameters of Chapter 7 of the Bankruptcy Code. The Proponents believe that the Plan is fair and equitable to all Classes of Claims and Interests under the Plan.

### **A. The Purpose of This Disclosure Statement**

The Bankruptcy Code generally requires the proponent of a Chapter 11 plan to prepare and file with the bankruptcy court a "disclosure statement" that provides information of the kind, and in sufficient detail, that would enable a typical holder of claims or interests in a class impaired under the plan to make an informed judgment with respect to the plan. This Disclosure Statement provides such information, as well as information regarding certain deadlines with respect to confirmation of the Plan.

This Disclosure Statement is not intended to replace careful review and analysis of the Plan. Rather, it is submitted as an aid and supplement in your review of the Plan, and attempts to explain the terms and implications of the Plan. Every effort has been made to fully explain the various aspects of the Plan as it may affect Creditors and holders of Interests. All Persons receiving this Disclosure Statement are urged to review all of the exhibits to this Disclosure Statement, in addition to reviewing the text of this Disclosure Statement. If you have any

questions, you may contact counsel for the Debtor. Contact information for such counsel is set forth within this Disclosure Statement, as well as on the cover page hereof.

Creditors and Interest holders should read this Disclosure Statement in its entirety prior to voting on the Plan. No solicitation of votes on the Plan may be made except pursuant to this Disclosure Statement, an Order of the Bankruptcy Court approving this Disclosure Statement and section 1125 of the Bankruptcy Code. No other party has been authorized to use any information concerning the Debtor or its operations, assets and liabilities, other than the information contained in this Disclosure Statement, to solicit votes on the Plan.

## **II.**

### **VOTING PROCEDURES AND REQUIREMENTS**

#### **A. Ballots and Voting Deadline**

Each holder of a Claim in an impaired Class (except Classes 7 and 8) is entitled to vote on the Plan and shall be provided a Ballot along with this Disclosure Statement. If a Creditor holds Claims in more than one impaired Class (except Class 7 and 8), such Creditor has been provided a separate Ballot for each such Class. The Ballot is to be used by the Creditor to accept or reject the Plan.

To ensure that their Ballot is deemed timely and considered by the Balloting Agent, each Creditor must (a) carefully review the Ballot and the instructions set forth thereon, (b) provide all of the information requested on the Ballot, (c) sign the Ballot and (d) return the completed and signed Ballot to the Balloting Agent by the Voting Deadline.

By Order of the Bankruptcy Court, the Voting Deadline is \_\_\_\_\_, **2013, at 5:00 p.m. (prevailing Central Time)**. Therefore, in order for a Ballot to be counted for voting purposes, the completed and signed Ballot must be **received** at the address specified below by not later than such Voting Deadline:

Munsch Hardt Kopf & Harr, P.C.  
Attn: Kevin M. Lippman  
3800 Lincoln Plaza  
500 N. Akard Street  
Dallas, Texas 75201-6659

#### **B. Creditors Solicited to Vote**

Each Creditor holding a Claim in an impaired Class under the Plan (excluding Classes 7 and 8) is being solicited to vote on the Plan. However, unless otherwise provided in the Plan, as to any Claim for which a proof of Claim was filed and as to which an objection has been lodged, if such objection is still pending as of the Voting Deadline, the Creditor's vote associated with such Claim will not be counted to the extent of the objection to the Claim, unless the Creditor Files a motion and obtains an Order of the Bankruptcy Court temporarily allowing the Claim in an amount that the Bankruptcy Court deems proper for the purpose of voting on the Plan. **Such motion must be heard and determined by the Bankruptcy Court at least ten (10) days prior to the Confirmation Hearing.** In addition, a Creditor's vote may be disregarded if the Bankruptcy Court determines that the Creditor's acceptance or rejection of the Plan was not



solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code, or that the Creditor is an insider of a Debtor within the meaning of section 101(31) of the Bankruptcy Code.

### **C. Definition of Impairment**

Pursuant to section 1124 of the Bankruptcy Code, except to the extent that the holder of a particular claim or equity interest within a class agrees to less favorable treatment of the holder's claim or equity interest, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan does at least one of the following two (2) things:

1. The plan leaves unaltered the legal, equitable and contractual rights to which such claim or equity interest entitles the holder of such claim or equity interest; or
2. Notwithstanding any contractual provision or applicable law that entitles the holder of such claim or equity interest to demand or receive accelerated payment of such claim or equity interest after the occurrence of a default, the plan:
  - (ii) cures any such default that occurred before or after the commencement of the case under the Bankruptcy Code, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) expressly does not require to be cured;
  - (iii) reinstates the maturity of such claim or equity interest as such maturity existed before such default;
  - (iv) compensates the holder of such claim or equity interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;
  - (v) if such claim or such equity interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensates the holder of such claim or equity interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and
  - (vi) does not otherwise alter the legal, equitable or contractual rights to which such claim or equity interest entitles the holder of such claim or equity interest.

### **D. Classes Impaired Under the Plan**

Classes 1 through 8 are impaired Classes under the Plan. All holders of Claims in Classes 1 through 6 are scheduled to receive on account of such Claims at least some property interest having potential value under the Plan. Accordingly, holders of Claims within Classes 1 through 6 are being solicited to vote on the Plan. Holders of Claims and Interests in Classes 7 and 8 are not scheduled to receive anything under the Plan. Pursuant to section 1126(g), such



Classes are deemed to have rejected the Plan, and holders of Claims and Interests in Classes 7 and 8 are therefore not being solicited to vote on the Plan.

With respect to the foregoing, the Proponents specifically reserve the right to determine and contest, if necessary, (a) the impaired or unimpaired status of a Class under the Plan, and (b) whether any Ballots cast by Creditors holding Claims within such a Class should be counted for purposes of confirmation of the Plan.

**E. Vote Required for Class Acceptance**

Pursuant to section 1126(c) of the Bankruptcy Code, a Class of Claims under the Plan shall be deemed to have accepted the Plan if the Plan is accepted by Creditors holding at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims within such Class held by Creditors that have accepted or rejected the Plan.

Pursuant to section 1126(e) of the Bankruptcy Code, on request of a party in interest in the Chapter 11 Case, and after notice and a hearing, the Bankruptcy Court may designate the vote of any Creditor whose acceptance or rejection of the Plan was not: (a) in good faith; (b) solicited or procured in good faith; or (c) made in accordance with the provisions of the Bankruptcy Code.

**III.  
CONFIRMATION OF THE PLAN**

**A. Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan.

The Confirmation Hearing has been scheduled to commence on \_\_\_\_\_, 2013, at \_\_\_\_\_m. (prevailing Central Time), before the Honorable D. Michael Lynn, United States Bankruptcy Judge for the Northern District of Texas, Eldon B. Mahon United States Courthouse, 501 W. Tenth Street, Fort Worth, Texas 76102. Any objection to confirmation of the Plan must be made in writing, and such written objection must be filed with the Bankruptcy Court and served on the following parties by not later than \_\_\_\_\_, 2013, at \_\_\_\_\_m. (prevailing Central Time):

Debtor's Counsel:  
Kevin M. Lippman  
Munsch Hardt Kopf & Harr, P.C.  
3800 Lincoln Plaza  
500 North Akard Street  
Dallas, Texas 75201-6659

Debtor:  
Vanderra Resources, LLC  
2525 Ridgmar Blvd., Ste. 200  
Fort Worth, TX 76116

Counsel for the Committee:

Andrew E. Jillson  
Hunton & Williams, LLP  
1445 Ross Avenue, Suite 3700  
Dallas, TX 75202

Committee:

Ken Davis  
Clean Blast Services, Inc.  
P.O. Box 677  
Kennedale, Texas 76060

United States Trustee:

Office of United States Trustee  
Attn: Meredyth A. Kippes  
1100 Commerce Street, Room 976  
Dallas, Texas 75242

**UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY FILED AND SERVED, IT  
WILL NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

**B. Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the confirmation requirements of section 1129(a) of the Bankruptcy Code have been satisfied. Only in the event that all of these requirements have been satisfied, and that all other conditions to confirmation set forth in the Plan have been met, will the Bankruptcy Court enter an Order confirming the Plan under section 1129(a). The requirements of section 1129(a) applicable to corporate debtors are as follows:

1. The plan complies with the applicable provisions of the Bankruptcy Code.
2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.
3. The plan has been proposed in good faith and not by any means forbidden by law.
4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.
5. The proponent of the plan has disclosed:
  - (a) the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan, and the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity interest holders and with public policy; and
  - (b) the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.
7. With respect to each impaired class of claims or interests:
  - (a) each holder of a claim or equity interest of such class has accepted the plan or will receive or retain under the plan on account of such claim or equity interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date; or
  - (b) if section 1111(b)(2) of the Bankruptcy Code applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.
8. With respect to each class of claims or interests, such class has accepted the plan or such class is not impaired under the plan.
9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that:
  - (a) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
  - (b) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive (i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim, or (ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;
  - (c) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash (i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim, (ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303 of the Bankruptcy Code, and (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b) of the Bankruptcy Code); and
  - (d) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8) of the Bankruptcy Code, but for the secured status of that claim, the holder of that claim

will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in paragraph 9(c) above.

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.
11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.
12. All fees payable under section 1930 of Title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.
13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.
14. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

If a sufficient number of Creditors and amounts of Claims in impaired Classes under the Plan vote to accept the Plan, the Debtor believes that the Plan will satisfy all of the applicable statutory requirements of section 1129(a) of the Bankruptcy Code. As discussed below, however, the Debtor believes that the Plan may be confirmed under the "cramdown" provisions of section 1129(b) of the Bankruptcy Code.

### **C. Cramdown**

Pursuant to section 1129(b) of the Bankruptcy Code, the Bankruptcy Court may confirm the Plan at the request of the Proponents if: (a) all of the requirements of section 1129(a) of the Bankruptcy Code, with the exception of section 1129(a)(8) (set out in paragraph 8 above), are met with respect to the Plan; (b) at least one Class of Claims that is impaired under the Plan has accepted the Plan (excluding the votes of insiders); and (c) with respect to each impaired Class that has not accepted the Plan, the Plan does not "discriminate unfairly" and is "fair and equitable."

A plan does not "discriminate unfairly" within the meaning of the Bankruptcy Code if the classification of claims under the plan complies with the Bankruptcy Code and no particular class will receive more than it is legally entitled to receive for its claims or interests.

"Fair and equitable," on the other hand, has a different meaning for classes of secured claims, classes of unsecured claims and classes of equity interests, as described below:

With respect to a class of secured claims that rejects the plan, to be "fair and equitable" the plan must, among other things, provide:

(a) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims, and that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(b) for the realization of such holders of the indubitable equivalent of such claims; or

(c) for the sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under (a) or (b) above.

With respect to a class of unsecured claims that rejects the plan, to be "fair and equitable" the plan must, among other things, provide:

(a) that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(b) that the holder of any claim or equity interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or equity interest any property.

With respect to a class of equity interests that rejects the plan, to be "fair and equitable" the plan must, among other things, provide:

(a) that each holder of an equity interest of such class receive or retain on account of such equity interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such equity interest; or

(b) that the holder of any equity interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior equity interest any property.

In the event that at least one impaired Class of Claims under the Plan accepts the Plan, the Proponents request the Bankruptcy Court confirm the Plan in accordance with the cramdown provisions of section 1129(b) of the Bankruptcy Code. The Proponents believe that all of the requirements of section 1129(a) of the Bankruptcy Code (with the exception of section 1129(a)(8)) will be satisfied, that at least one Class of impaired Claims will accept the Plan (excluding the votes of insiders), and that the Plan does not unfairly discriminate against and is fair and equitable in relation to each of the Classes that may vote to reject the Plan.

#### IV. PLAN OVERVIEW

The Plan is designed to accomplish the further liquidation of the Debtor's Estate and provide a mechanism for the Distribution of the proceeds of such liquidation to beneficiaries of the Estate. The Plan provides for the creation of The Vanderra Resources, LLC Liquidating Trust (the "Trust"). A copy of the Trust Agreement, which shall govern the actions of, among others, the Trustee is attached hereto as **Exhibit "D"**. The purpose of the Trust is to effectuate the administration and orderly liquidation of the Estate's remaining assets, including Causes of Action. The Trust's beneficiaries are holders of Allowed Claims against the Debtor. Under the Plan, all of the Debtor's powers, assets and property not transferred or distributed on or prior to the Effective Date of the Plan shall vest in the Trust on the Effective Date for the benefit of the beneficiaries.

The Trustee shall make Distributions to the holders of Allowed Claims against the Debtor, according to the Classes and treatment specified for such Classes set forth in the Plan according to the priorities specified in the Bankruptcy Code.

The Plan specifies the means for accomplishing these objectives, and pertinent provisions of the Plan in relation thereto are described in detail in this Disclosure Statement. The Plan divides Claims against the Debtor into eight (8) separate Classes of Claims<sup>1</sup> and Interests, and then sets out the treatment to be provided to each such Class under the Plan. Sections 1122 and 1123 of the Bankruptcy Code require such classification and mandate that each Class of Claims or Interests contains Claims and Interests that are substantially similar to one another. The various Classes of Claims and Interests and the treatment provided under the Plan to each such Class are discussed in greater detail in later sections of this Disclosure Statement.

The following table sets out the Proponents' estimate of the total Allowed amount of Claims and Interests falling within each Class (as asserted or scheduled), and summary of the treatment afforded to each Class under the Plan. The information set forth within the table is qualified in its entirety by the more detailed information regarding the Plan set forth in this Disclosure Statement, the exhibits hereto (including the Plan itself) and the additional disclosures which follow the table.

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<sup>1</sup> There are two exceptions to the classification of Claims. Because Administrative Claims and Priority Tax Claims are subject to mandatory treatment under the Bankruptcy Code, they are not subject to classification.

SUMMARY OF TREATMENT OF CLASSES UNDER THE PLAN		
Class	Estimated Amounts	General Treatment Under Plan
Unclassified – Allowed Administrative Claims	Est. Allowable Claims (including Allowed professional fee Claims): Approximately \$[TBD]	<p>Unless otherwise agreed to by the Trustee and the holder of an Allowed Administrative Claim, paid in full out of Available Cash by the Trust within fifteen (15) days after the later of (a) the Effective Date, or (b) becoming an Allowed Administrative Claim; <u>provided, however</u>, that Allowed Administrative Claims that represent liabilities incurred on or after the Petition Date, but prior to the Effective Date, in the ordinary course of the Debtor's businesses shall be paid in accordance with the agreements related thereto.</p> <p>Est. recovery: 100%</p>
Unclassified – Allowed Priority Tax Claims	Est. Allowable Claims: Approximately \$[TBD]	<p>Unless otherwise agreed to in writing by the Trustee and the holder of an Allowed Priority Tax Claim, each holder shall be paid out of Available Cash in an amount equal to the unpaid portion of such Allowed Priority Tax Claim on the first Distribution Date following the Allowance Date for such Claim; <u>provided, however</u>, that any Claim or demand for payment of a Subordinated Tax Penalty Claim shall be disallowed pursuant to the Plan, and the holder of an Allowed Priority Tax Claim shall not be allowed to assess or attempt to collect such penalty from the Debtor, its Estate, or its property. To the extent that there is insufficient Available Cash to pay all Claims which have priority over any Allowed Priority Tax Claims, no Distributions will be made on account of such Claims until the Trust holds sufficient Available Cash, and the Trust Reserve is fully funded.</p> <p>Est. recovery: 100%</p>



<b>SUMMARY OF TREATMENT OF CLASSES UNDER THE PLAN</b>		
<b>Class</b>	<b>Estimated Amounts</b>	<b>General Treatment Under Plan</b>
1 – Secured Claims of PlainsCapital Bank	Est. Allowable Claims: Unknown	To the extent an Allowed Secured Claim, paid out of a portion of Disputed Cash that is subject to the full satisfaction of any senior security interests to PlainsCapital, as soon as reasonably practicable following the Allowance Date.  Est. recovery: 100%
2 – Secured Claims of Stone Arch Capital	Est. Allowable Claims: Unknown	To the extent an Allowed Secured Claim, paid out of a portion of Disputed Cash that is subject to the full satisfaction of any senior security interests to Stone Arch Capital, as soon as reasonably practicable following the Allowance Date.  Est. recovery: 100%
3 – Secured Tax Claims	Est. Allowable Claims: Approximately \$[TBD]	Unless otherwise agreed between the Claimant and the Trustee, each holder of an Allowed Secured Tax Claim shall be fully satisfied from Available Cash within thirty (30) days after the later of (a) the Effective Date or (b) becoming an Allowed Secured Tax Claim.  Est. recovery: 100%
4 – Other Secured Claims	Est. Allowable Claims: Approximately \$0	Unless otherwise agreed between the Claimant and the Trustee, each holder of an Allowed Other Secured Claim shall be fully satisfied from Disputed Cash within thirty (30) days after the later of (a) the Effective Date or (b) becoming an Allowed Other Secured Claim. To the extent any or all assets securing an Allowed Other Secured Claim has been sold or otherwise disposed of by the Debtor or the Trustee, such holder of an Allowed Other Secured Claim shall be paid from a portion of the Disputed Cash that is subject to the full satisfaction of any senior security interests to the holder of an Allowed Other Secured Claim.  Est. recovery: 100%

SUMMARY OF TREATMENT OF CLASSES UNDER THE PLAN		
Class	Estimated Amounts	General Treatment Under Plan
5 – Priority Non-Tax Claims	Est. Allowable Claims: Approximately \$[TBD]	<p>Unless otherwise agreed, paid in full from Available Cash within thirty (30) days after the later of (a) the Effective Date or (b) becoming an Allowed Priority Non-Tax Claim,; <u>provided, however,</u> Allowed Administrative Claims and Allowed Priority Tax Claims have been paid in full, and the Trust Reserve contains sufficient Available Cash to pay (a) any Disputed Administrative Claim and Disputed Priority Tax Claim in full, or in such other amounts as agreed upon in writing by the holder of such Claim and the Trustee, and (b) actual and anticipated Trust expenses.</p> <p>Est. recovery: [TBD] %</p>
6 – General Unsecured Claims	Est. Allowable Claims: Approximately \$[TBD]	<p>Paid by the Trustee from Available Cash Pro Rata on any Distribution Date when such Available Cash exists, and any such Claims that are subsequently Allowed shall be paid Pro Rata on a cumulative basis from Available Cash on the next Distribution Date after the Allowance Date; <u>provided, however,</u> Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Class 5 Priority Non-Tax Claims have been paid in full, and the Trust Reserve contains sufficient Available Cash to pay (a) any Disputed Administrative Claim, Disputed Priority Tax Claim, and Disputed Class 5 Priority Non-Tax Claim in full, or in such other amounts as agreed upon in writing by the holder of such Claim and the Trustee, and (b) actual and anticipated Trust expenses.</p> <p>Est. recovery: [TBD] %</p>

SUMMARY OF TREATMENT OF CLASSES UNDER THE PLAN		
Class	Estimated Amounts	General Treatment Under Plan
7 – Subordinated Claims	Est. Allowable Claims: Unknown	<p>Paid by the Trustee from Available Cash Pro Rata on any Distribution Date when such Available Cash exists, and such Claims that are subsequently Allowed shall be paid Pro Rata on a cumulative basis from Available Cash on the next Distribution Date after the Allowance Date; <u>provided, however</u>, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 5 Priority Non-Tax Claims, and Allowed Class 6 General Unsecured Claims have been paid in full, and the Trust Reserve contains sufficient Available Cash to pay (a) any Disputed Administrative Claim, Disputed Priority Tax Claim, Disputed Class 5 Priority Non-Tax Claim, and Disputed Class 6 General Unsecured Claim in full, or in such other amounts as agreed upon in writing by the holder of such Claim and the Trustee, and (b) actual and anticipated Trust expenses.</p> <p>Est. recovery: None</p>

SUMMARY OF TREATMENT OF CLASSES UNDER THE PLAN		
Class	Estimated Amounts	General Treatment Under Plan
8 – Interests	Est. Interests: N/A	<p>All Allowed Class 8 Interests shall be deemed canceled on the Effective Date; <u>provided, however</u>, that holders of Class 8 Interests as of the Effective Date, or their successors or assigns, shall be paid from Available Cash Pro Rata by the Trustee on any Distribution Date when such Available Cash exists, and any such Interests that are subsequently Allowed shall be paid Pro Rata on a cumulative basis from Available Cash on the next Distribution Date after the Allowance Date. No distributions shall be made to holders of Class 8 Interests unless holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 5 Priority Non-Tax Claims, Allowed Class 6 General Unsecured Claims, and Allowed Class 7 Subordinated Claims have been paid in full, and the Trust Reserve contains sufficient Available Cash to pay (a) any Disputed Administrative Claim, Disputed Priority Tax Claim, Disputed Class 5 Priority Non-Tax Claim, Disputed Class 6 General Unsecured Claim, and Disputed Class 7 Subordinated Claim in full, or in such other amounts as agreed upon in writing by the holder of such Claims and the Trustee, and (b) actual and anticipated Trust expenses.</p> <p>Est. recovery: None</p>

**Factors and Assumptions Applied in Arriving at Estimates**

The estimated Allowable Claims per Class in the foregoing table have been derived from the Schedules for the Debtor's Estate prepared by the Proponents and their Professionals using information from the Debtor's books and records and other information available to them, as well as proofs of Claims filed by Creditors in the Chapter 11 Case and Orders entered by the Bankruptcy Court. Although a Proponent, the Committee has not independently audited the Schedules, the Debtor's books and records, or the Proofs of Claim filed by the Creditors in the Chapter 11 Case.

To date, one hundred and twenty-five (125) proofs of Claim have been filed in the Chapter 11 Case, collectively asserting Claims in the approximate amount of \$25.6 million. In

addition, many Claimants with filed proofs of Claim are listed on the Schedules with holding a Claim against the Debtor. For those Claimants listed on the Schedules who have also filed proofs of Claim in the Chapter 11 Case, applicable Bankruptcy Rules provide that the proofs of Claim have superseded any amounts reflected in the Schedules. To the extent Claims scheduled by the Debtor have not been superseded by proofs of Claim, the estimates in the foregoing table take into account Claims scheduled in a liquidated, non-contingent and undisputed amount. Where duplicative or amended Claims appear to have been filed, including Scheduled Claims, the foregoing estimates assume that duplicates and superseded Claims will be Disallowed in favor of, at most, a single surviving Claim. The estimates also include application of merit-based objections known to the Proponents and their counsel as of the date of this Disclosure Statement and, therefore, constitute their best estimate, as of the date of Filing of this Disclosure Statement, of the ultimate allowable amount of Claims in each such Class.

The ultimate resolution of Claims is inherently uncertain. Moreover, the Proponents have not completed their evaluation of all Claims and cannot presume the validity of merit-based disputes or objections thereto. Any Claim which is a Disputed Claim may be Disallowed or reduced in amount if an objection has been or is timely hereafter filed and sustained by the Bankruptcy Court. Because the resolution of Disputed Claims involves many factual and legal issues which may or may not be resolved as anticipated, no assurance can be given that the anticipated amount of Allowable Claims in each Class would be achieved were these assumptions included in the foregoing estimates. The Proponents believe that the ultimate universe of Allowed Claims will be substantially lower than the face amount of the filed proofs of Claims, and that the current estimates of Allowable Claims shown herein above in each Class are reasonably precise given the particular circumstances.

Notwithstanding, the foregoing estimates contained herein shall not be deemed as any admission on the part of the Proponents, the Estate or the Trustee as to the validity of any Claim. Similarly, the projected recovery levels reflected in the table above are estimates only, there is no guaranty that such levels of recovery will be achieved, and such estimates shall not constitute an admission on the part of the Proponents or the Estate to the validity of any Disputed Claims. Any Claim which is not Allowed by an Order of the Bankruptcy Court or pursuant to a settlement approved by an Order of the Bankruptcy Court may be Disallowed or reduced in amount if an objection has been, or is timely hereafter, filed and sustained by the Bankruptcy Court. Except as otherwise provided in the Plan, all objections and other defenses to Disputed Claims are preserved under the Plan.

## **V.**

### **HISTORICAL AND BACKGROUND INFORMATION**

#### **A. Organizational Information**

The Debtor is a privately-held Delaware limited liability company, organized on or about December 2, 2010. The current members of the Debtor are Stone Arch Capital (96.61%), Darryl Roberts (2.14%) and Jerry Ilseng (1.25%).

## **B. The Debtor's Business and Operations**

The Debtor was an innovator in the oil-field services industry, providing one-stop solutions for the setup of drilling sites. Such services included the construction of well-site locations and roads, compressor pads, pipelines, and frac ponds, prior to the drilling and operation phase. The Debtor also pioneered the use of plastic containment systems endorsed by the Department of Environmental Protection of Pennsylvania and used that technology successfully for a number of years.

As one of the first service providers in the Marcellus Shale, the Debtor grew rapidly and earned a loyal customer base. With a solid base of expert employees, extensive experience in the industry, yards and storage sites in strategic locations within the U.S., and a large fleet of vehicles, the Debtor was uniquely positioned to service the needs of its customers.

## **C. Events Leading to Chapter 11 Filing**

Due to various macroeconomic and microeconomic factors, including the taking of key salespersons by competitors, a saturation of oil-field providers and a slow down in drilling operations, the Debtor's business and its profitability began to decline. New management was hired to analyze the Debtor's business operations and to refocus its operations on more profitable ventures.

As part of the same, the Debtor took substantial steps to reduce the size of its operations and the scope of its workforce. Among other things, the Debtor closed underperforming yards and divisions and laid off over 100 employees. The Debtor focused its operations on profitable yards and divisions, around which the Debtor intended to reorganize, including operations in Ohio, West Virginia and Texas. The Debtor, however, continued to be burdened with various legacy debt, in addition to the normal restructuring and transition costs. Ultimately, this led to a liquidity crisis and to threats by multiple creditors to exercise their remedies, which threatened a loss of the Debtor's business. As a result, the Debtor was forced to seek protection under Chapter 11 of the Bankruptcy Code. Accordingly, the Debtor voluntarily sought bankruptcy protection on the Petition Date.

## **D. Management of the Debtor**

As of the Petition Date, the Debtor's management consisted of George Langis (President), Joseph Lassiter (Chief Administrative Officer), and Mike Morgan (Chief Financial Officer). Following Mr. Langis' resignation effective November 30, 2012, Mr. Lassiter became President of the Debtor.

## **VI.**

### **SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE**

During the course of the Chapter 11 Case, various pleadings have been filed with the Bankruptcy Court. The following is a description of the more significant events which have transpired during the pendency of the Chapter 11 Case to the extent not discussed elsewhere in this Disclosure Statement. For a comprehensive listing of the pleadings which have been filed in the Chapter 11 Case, the docket for the Chapter 11 Case should be reviewed, and relevant

pleadings referenced therein may be obtained from the Clerk's Office of the Bankruptcy Court, via the online PACER system.

## **A. Employment of Professionals**

### **1. Debtor's Counsel**

On September 10, 2012, the Debtor filed its *Application for Approval of Employment of Munsch Hardt Kopf & Harr, P.C. as Attorneys for the Debtor-in-Possession* [Docket No. 7], pursuant to which the Debtor sought authority to employ Munsch Hardt Kopf & Harr, P.C. as its general bankruptcy counsel, effective as of the Petition Date. This application was approved by Order of the Bankruptcy Court [Docket No. 98] entered on October 10, 2012, thereby authorizing the Debtor to employ Munsch Hardt Kopf & Harr, P.C. as general bankruptcy counsel for the Debtor as of the Petition Date.

### **2. Other Professionals of the Debtor**

On October 31, 2012, the Debtor filed its *Expedited Application for Approval of Employment of Ritchie Bros. Auctioneers, as Auctioneer for the Debtor-in-Possession* [Docket No. 142], pursuant to which it sought authority to employ Ritchie Bros. Auctioneers as its auctioneer, effective as of October 30, 2012, to assist with liquidating all of the Debtor's yards and related personal property. This application was approved by Order of the Bankruptcy Court [Docket No. 194] entered on November 20, 2012, thereby authorizing the Debtor to employ Ritchie Bros. Auctioneers as of October 30, 2012 and to compensate Ritchie Bros. Auctioneers, pursuant to section 328(a) of the Bankruptcy Code, without need for the filing of any interim or final fee application.

On November 2, 2012, the Debtor filed its *Emergency Application for Approval of Employment of RE/MAX First, as Residential Real Estate Broker for the Debtor-in-Possession* [Docket No. 146], pursuant to which it sought authority to employ RE/MAX First to assist with marketing and selling approximately 26 acres of residential real property located in Wellsboro, Pennsylvania. This application was approved by Order of the Bankruptcy Court [Docket No. 195] entered on November 20, 2012, thereby authorizing the Debtor to employ RE/MAX First and to compensate RE/MAX First, pursuant to section 328(a) of the Bankruptcy Code, without need for the filing of any interim or final fee application.

On December 12, 2012, the Debtor filed its *Expedited Application for Approval of Employment of Rosen Systems, Inc. as Online Auctioneer for the Debtor-in-Possession* [Docket No. 229], pursuant to which it sought authority to employ, effective as of December 11, 2012, Rosen Systems, Inc. to assist with liquidating the Debtor's furniture and equipment located at 2525 Ridgmar Boulevard, Fort Worth, Texas. This application was approved by Order of the Bankruptcy Court [Docket No. 258] entered on January 2, 2013, thereby authorizing the Debtor to employ Rosen Systems, Inc. and to compensate Rosen Systems, Inc., pursuant to section 328(a) of the Bankruptcy Code, without need for the filing of any interim or final fee application.

### **3. Counsel for the Committee**

On September 20, 2012, the UST filed a notice of its appointment of the Committee [Docket No. 65]. On October 5, 2012, the Committee filed its *Application for Order Authorizing*



*Retention and Employment of Hunton & Williams LLP as Counsel to the Official Committee of Unsecured Creditors* [Docket No. 92], pursuant to which it sought authority to employ, effective as of September 20, 2012, Hunton & Williams LLP as its legal counsel. This application was approved by Order of the Bankruptcy Court [Docket No. 173] entered on November 14, 2012.

## **B. Financing of Operations and Administration of the Estate**

### **1. Employee Compensation and Benefits**

On September 10, 2012, the Debtor filed its *Emergency Motion to Honor and Pay Prepetition Employee Compensation and Benefits* [Docket No. 8], pursuant to which it sought authority to pay certain prepetition wages and benefits and to continue prepetition health insurance and vacation benefits through the pendency of the Chapter 11 Case. This motion was granted by Order of the Bankruptcy Court [Docket No. 55] entered on September 17, 2012.

### **2. Authorization to Use Cash Collateral, Obtain Post-Petition Financing and Grant Adequate Protection**

On September 10, 2012, the Debtor filed its *Emergency Motion for Interim and Final Use of Cash Collateral* [Docket No. 6], pursuant to which it sought authority to use the cash collateral of the Debtor's secured creditors. On September 11, 2012, the Debtor filed its *Motion for Entry of Interim and Final Orders (I) Authorizing Debtor to Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Granting Adequate Protection to Prepetition Lender, (III) Granting Liens and Superpriority Claims, and (IV) Scheduling a Final Hearing on the Relief Requested Herein Pursuant to Bankruptcy Rules 4001(b)* [Docket No. 17], pursuant to which it sought approval to receive debtor-in-possession financing from PlainsCapital. On November 15, 2012, the Bankruptcy Court entered its *Final Order (I) Authorizing Use of Cash Collateral Pursuant to Sections 105, 361, 362, and 363 of the Bankruptcy Code, (II) Authorizing the Debtor's Obtainment and Repayment of Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (III) Granting Adequate Protection to the Prepetition Lender Pursuant to Sections 361, 362, and 363 of the Bankruptcy Code, and (IV) Granting Liens and Superpriority Claims* [Docket No. 176] (the "Final Cash Collateral and DIP Financing Order"), which (a) authorized the Debtor to use cash collateral through February 28, 2013, (b) authorized the Debtor to obtain and repay debtor-in-possession financing, (c) granted adequate protection as set forth therein, (d) granted Liens and superpriority claims to the Debtor's lenders, and (e) approved procedures to extend the use of cash collateral without the need for an additional Order of the Bankruptcy Court.

## **C. Lender Claims Investigation**

Pursuant to the Final Cash Collateral and DIP Financing Order, the Debtor and the Committee were provided sixty (60) days from the Bankruptcy Court's entry of the Final Cash Collateral and DIP Financing Order (the "Investigation Period") to assert certain claims against PlainsCapital or Stone Arch Capital, including but not limited to, avoidance, recharacterization, subordination and lender liability claims. To provide additional time for the Debtor and the Committee to make a final determination as to whether to assert such claims, the Investigation Period has been extended by agreement to February 11, 2013.

**D. Sale of Assets of the Debtor's Estate**

**1. Tractor-Trailers and Storage Containers to Towanda Iron and Metal Inc.**

On September 14, 2012, the Debtor filed its *Expedited Motion to Sell Tractor-Trailers and Containers Free and Clear of All Liens, Claims, Encumbrances, and Interests Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and (f)* [Docket No. 39], pursuant to which it sought authority to sell nine (9) tractor-trailers and twenty-seven storage containers free and clear of all Liens, claims, interests and other encumbrances to Towanda Iron and Metal Inc. for a purchase price of \$246,700.00. On September 19, 2012, the Bankruptcy Court entered an Order [Docket No. 62] granting this motion and approving the sale under the terms set forth therein.

**2. Rolling Stock and Other Personal Property Located at Debtor's Yards in Texas**

On October 27, 2012, the Debtor filed its *Emergency Motion to: (i) Sell Personal Property from Kennedy, Canadian, and Weatherford Sites at Auction; and (ii) to Employ Ritchie Brothers Auctioneers for the Same* [Docket No. 130], pursuant to which the Debtor sought to auction its personal property, comprising mostly of rolling stock, located at its yards in Kennedy, Texas, Canadian, Texas and Weatherford, Texas, free and clear of all Liens, claims, interests and other encumbrances, through the employment of Ritchie Bros. Auctioneers. On October 29, 2012, PlainsCapital filed a limited objection [Docket No. 137] to the motion to the extent the motion asserted PlainsCapital did not have any Liens in the subject property, and the motion did not exclude two vehicles in which Ford Motor Credit Company LLC purportedly held Liens in its favor. By Order on November 2, 2012 [Docket No. 150], the Bankruptcy Court approved the auctioning of the Debtor's personal property free and clear of all Liens, claims, interests and other encumbrances, subject to the Debtor's future employment of Ritchie Bros. Auctioneers, the Debtor later filing an itemized statement of the property and sale proceeds and excluding any vehicles in which Ford Motor Credit Company LLC holds valid Liens or security interests, and further authorized the Debtor's auction of its personal property located at its yards in Houston, Texas and Fort Worth, Texas.

On December 6, 2012, the Debtor filed its *Report of Auction (Houston Auction)* [Docket No. 223], providing that the Houston, Texas auction generated net sale proceeds to the Estate in the amount of \$454,317.64. On January 4, 2013, the Debtor filed its *Report of Auction (Fort Worth Auction)* [Docket No. 266], providing that the Fort Worth, Texas auction generated net sale proceeds to the Estate in the amount of \$2,292,274.27.

**3. Rolling Stock and Other Personal Property Located at Debtor's Yards in Morgantown, West Virginia and Canton, Ohio**

On November 8, 2012, the Debtor filed its *Expedited Motion to Sell Personal Property at Morgantown W. Va. and Canton Oh. Yards at Auction* [Docket No. 161], pursuant to which the Debtor sought to auction its personal property, comprising mostly of rolling stock and equipment, located at its yards located in Morgantown, West Virginia and Canton, Ohio, free and clear of all Liens, claims, interests and other encumbrances, through the employment of Ritchie Bros. Auctioneers. By Order [Docket No. 205] entered on November 28, 2012, the Bankruptcy Court approved the auctioning of the Debtor's personal property free and clear of all Liens,

claims, interests and other encumbrances, subject to the Debtor later filing an itemized statement of the property and sale proceeds and excluding any vehicles in which Ford Motor Credit Company LLC holds valid Liens or security interests.

On January 8, 2013, the Debtor filed its *Report of Auction (Columbus Auction)* [Docket No. 269], providing that the auction of the Debtor's personal property (previously maintained at its yards in Morgantown, West Virginia and Canton, Ohio) generated sale proceeds in the amount of \$1,461,150.00.

#### **4. Two Trucks to Dean Seymor**

On November 8, 2012, the Debtor filed its *Expedited Motion to Sell Two Trucks to Dean Seymor Free and Clear of all Liens, Claims, Encumbrances, and Interests Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and (f)* [Docket No. 162], pursuant to which it sought authority to sell two (2) truck tractors free and clear of all Liens, claims, interests and other encumbrances to Dean Seymor for a purchase price of \$40,000.00. On November 19, 2012, the Bankruptcy Court entered an Order [Docket No. 190] granting this motion and approving the sale under the terms set forth therein.

#### **5. Personal Property at Debtor's Office Headquarters**

On December 12, 2012, the Debtor filed its *Motion to: (I) Sell Personal Property from Debtor's Fort Worth Headquarters at Auction; and (II) to Employ Rosen Systems, Inc. for the Same* [Docket No. 230], pursuant to which the Debtor sought to auction its personal property at its office headquarters in Fort Worth, Texas, comprised mostly of furniture, equipment and information technology, free and clear of all Liens, claims, interests and other encumbrances, through the employment of Rosen Systems, Inc. By Order on December 21, 2012 [Docket No. 251], the Bankruptcy Court approved the auctioning of the Debtor's personal property free and clear of all lines, claims, interests and other encumbrances, provided, however, that the Debtor later file an itemized statement of the property and the sale proceeds.

#### **6. Surface Covers**

On December 31, 2012, the Debtor filed its *Motion to Sell Surface Covers Free and Clear of All Claims, Liens, Interests, and Encumbrances* [Docket No. 255], pursuant to which it sought authority to sell numerous commercial surface covers, used to protect surface areas or to create vehicle traction at drilling sites, free and clear of all Liens, claims, interests and other encumbrances to Well Service Group for a purchase price of \$50,000.00. On January 31, 2013, the Bankruptcy Court held a hearing on this motion and approved the sale under the terms of the motion.

#### **7. Miscellaneous Assets**

On October 2, 2012, the Debtor filed its *Expedited Motion to Sell (7 Miscellaneous Sales) Free and Clear of All Claims, Liens, Interests and Encumbrances* [Docket No. 84], pursuant to which it sought authority to effectuate seven (7) miscellaneous sales of personal property, including but not limited to multiple trucks and trailers, to six (6) different proposed buyers for a total purchase price of \$687,100.00, free and clear of all Liens, claims, interests and other encumbrances. This motion was granted by Order of the Bankruptcy Court [Docket No. 114]

entered on October 16, 2012, which was subsequently modified by separate Order [Docket No. 213] of the Bankruptcy Court entered on December 3, 2012 to accommodate a *de minimis* change in the property to be sold to one of the proposed buyers, AES Water Solutions, LLC.

On December 12, 2012, the Debtor filed its *Expedited Motion to Sell (5 Miscellaneous Sales) Free and Clear of All Claims, Liens, Interests and Encumbrances* [Docket No. 231], to effectuate five (5) miscellaneous sales of remaining personal property, following the closing and liquidation of the Debtor's yards and related assets, to four (4) different proposed buyers for a combined purchase price of \$109,450.00, free and clear of all Liens, claims, interests and other encumbrances. This motion was granted by Order of the Bankruptcy Court [Docket No. 249] entered on December 21, 2012.

#### **E. Accounts Receivable and Key Employee Incentive Program**

On November 16, 2012, the Debtor filed its *Motion for Order Approving Key Employee Incentive Plan Pursuant to Sections 105(a), 363(b) and 503(c) of the Bankruptcy Code* [Docket No. 187], pursuant to which the Debtor sought approval of its Key Employee Incentive Plan. On November 26, 2012, the UST objected to the motion [Docket No. 200] on the basis that the Key Employee Incentive Plan did not satisfy section 363(c)(1) and (3) of the Bankruptcy Code. On November 27, 2012, PlainsCapital filed a limited objection to the motion [Docket No. 201], recommending only that, with respect that portion of the Key Employee Incentive Plan which sought to compensate the key employees based accounts receivable collection (the "Incentive Compensation"), that it not pay the key employees weekly but, rather, reserve payment until the end of March 2013 (when the Debtor's operations are anticipated to cease). Pursuant to an Order of the Bankruptcy Court [Docket No. 210] entered on November 30, 2012, the motion was granted and the Key Employee Incentive Plan was approved; provided, however, that the Incentive Compensation be paid on the earlier of: (i) March 1, 2013; (ii) the effective date of a liquidating Chapter 11 plan in the Chapter 11 Case; or (iii) the date the Chapter 11 Case is converted to a case under Chapter 7 of the Bankruptcy Code.

#### **F. Settlement with Caprock Energy Services, LLC**

On January 17, 2013, the Debtor filed its *Motion to Approve Settlement and Compromise with Caprock Energy Services, LLC Regarding Outstanding Accounts Receivable* [Docket No. 278], pursuant to which the Debtor requested that the Court approve a settlement between the Debtor and Caprock Energy Services, LLC which would, among other things, allow the Estate to realize a recovery of \$415,529.18 on \$597,512.43 previously invoiced to Caprock Energy Services, LLC. On January 31, 2013, the Bankruptcy Court held a hearing on this motion and approved the terms of the settlement set forth in the motion.

#### **G. Show Cause Motion Against Thomas Petroleum, LLC**

On September 12, 2012, the Debtor filed its *Motion to Show Cause Why Thomas Petroleum, LLC Should Not Be Held in Contempt and Sanctioned for Violating the Automatic Stay* [Docket No. 19], pursuant to which the Debtor requested that Thomas Petroleum, LLC be forced to show cause as to why it should not be held in contempt and sanctioned for cancelling, without notice, fuel cards relied on by the Debtor's employees to purchase fuel for the Debtor's trucks. On September 17, 2012, Thomas Petroleum, LLC filed a response [Docket No. 44] in

opposition to the motion, arguing, among other things, that it had no obligation to notify the Debtor before cancelling the cards, nor was it required to continue doing business with the Debtor. On September 18, 2012, the Bankruptcy Court approved an agreed Order [Docket No. 60] submitted by the parties, ordering that the cards become debit cards on which Debtor prepay funds used to purchase fuel, which provided that the Debtor may use pre-funded debit cards issued by Thomas Petroleum to purchase fuel.

## **H. Lift Stay and Adequate Protection Motions**

### **1. First Insurance Funding Corp.**

On October 24, 2012, First Insurance Funding Corp., which finances the Debtor's worker's compensation insurance, filed its *Motion for Relief from the Automatic Stay as to Premium Finance Agreement* [Docket No. 126], pursuant to which it claimed the deterioration of its collateral in the form of insurance premiums as a result of alleged defaults by the Debtor totaling \$67,626.76. On November 7, 2012, the Debtor filed an objection to the motion [Docket No. 159] so that it would have an opportunity to investigate the alleged defaults and cure any post-petition defaults before First Insurance Funding Corp. received relief from the automatic stay. Pursuant to an agreed Order [Docket No. 244] entered by the Bankruptcy Court on December 18, 2012, First Insurance Funding Corp. was denied relief from the automatic stay as a result of the Debtor making adequate protection payments to First Insurance Funding Corp. in the aggregate amount of \$62,908.60.

### **2. Enterprise FM Trust**

On November 8, 2012, Enterprise FM Trust filed its *Motion for Relief from the Automatic Stay* [Docket No. 160], pursuant to which it asserted, among other things, security interests in three (3) tractor-trailers in the Debtor's possession in accordance with that certain *Master Equity Lease Agreement* and amendment thereto, and that the Debtor lacked equity in the trailers. On November 23, 2012, the Debtor filed an objection to the motion [Docket No. 198], arguing that the Debtor retained the trailers through a true lease agreement and, therefore, the trailers were not collateral of Enterprise FM Trust. Pursuant to an agreed Order [Docket No. 243] entered by the Bankruptcy Court on December 18, 2012, Enterprise FM Trust was granted relief from the automatic stay for the limited purpose of allowing it to collect and foreclose on the trailers, as well as to de-activate certain charge cards issued by Enterprise FM Trust to Debtor to fund vehicle repairs.

### **3. Ford Motor Credit Company LLC**

On November 16, 2012, Ford Motor Credit Company LLC filed its *Motion for Relief from the Automatic Stay* [Docket No. 185], pursuant to which it asserted, among other things, security interests in thirteen (13) Ford vehicles in the Debtor's possession, that the Debtor was unable to offer adequate protection, and that the Debtor lacked equity in the collateral. Pursuant to an agreed Order [Docket No. 253] entered by the Bankruptcy Court on December 26, 2012, Ford Motor Credit Company LLC was granted relief from the automatic stay for the limited purpose of allowing it to collect and foreclose on the vehicles.



## **I. Motion to Convert Chapter 11 Case**

On November 8, 2012, Darryl Roberts, Jerry Ilseng and D.J.J. Holdings L.P. filed their *Motion to Convert Case* to Chapter 7 [Docket No. 164], pursuant to which they argued in favor of converting the Chapter 11 Case to a Chapter 7 case. On December 5, 2012, the Debtor filed an objection to the motion [Docket No. 219] on the basis that the movants were unable to satisfy their burden of demonstrating cause to convert the Chapter 11 Case to a Chapter 7 case, where conversion would only lead to undue delay, loss of additional value to the Estate in the form of uncollected accounts receivable and create an additional, unnecessary layer of administrative and statutory expenses. The Committee and PlainsCapital also objected to the motion [Docket Nos. 212 and 214]. On December 6, 2012, prior to a hearing on the matter, the movants withdrew their motion [Docket No. 220].

## **J. Litigation with Schmidt Oilfield Service Venture**

### **1. The State Court Action**

Prior to the Petition Date, on March 27, 2012, Schmidt Oilfield Service Venture ("Schmidt") filed a suit on a sworn account and various other claims, Cause No. 12-03-0268-CVA, against multiple defendants, including the Debtor, (the "State Court Action") in the 218th Judicial District Court for Atascosa County, Texas, seeking in excess of \$570,000.00 for the alleged nonpayment by the Debtor, in its capacity as a subcontractor, for goods and labor furnished to it in connection with a construction project. Upon the commencement of the Chapter 11 Case, the State Court Action was stayed pursuant to 11 U.S.C. § 362(a). On September 26, 2012, the Debtor removed the State Court Action, pursuant to Bankruptcy Rule 9027(a), to the United States Bankruptcy Court for the Western District of Texas, San Antonio Division, where it was assigned Adv. Proc. No. 12-05119-lmc. The Debtor then sought transferred the case to this Bankruptcy Court, while Schmidt sought remand or abstention. On October 24, 2012, following a contested hearing, the United States Bankruptcy Court for the Western District of Texas, San Antonio Division denied the request for remand and abstention and transferred the case to this Bankruptcy Court, where it was assigned Adv. Proc. No. 12-04140-dml.

### **2. Motion for Adequate Protection**

On November 13, 2012, Schmidt filed its *Motion for Adequate Protection Pursuant to 11 U.S.C. § 363(e)* [Docket No. 171], pursuant to which it argued that funds received by the Debtor from the general contractor of the alleged construction project were held by the Debtor in trust for the benefit of Schmidt under Texas statutory law and was not property of the estate; and, as a result, such funds should be escrowed. On November 15, 2012, the Debtor filed an objection to the motion [Docket No. 180], arguing that the motion was procedurally improper, in lieu of the pending adversary proceeding involving trust fund claims against the Debtor, and that the dispute for such funds should be between Schmidt Oilfield Service Venture and PlainsCapital (which asserts a banker's Lien in the funds), not the Debtor. On January 23, 2013, Schmidt filed a notice withdrawing this motion [Docket No. 284].

### **3. Settlement and Compromise Between Debtor and Schmidt Oilfield Service Venture**

On December 6, 2012, following several weeks of extensive good faith and arm's length negotiations between the Debtor, Schmidt, Gerad Morris (another defendant in the State Court Action and former employee of the Debtor) and Wil Rounsaville (also a defendant in the State Court Action and a former employee of the Debtor), the Debtor filed its *Motion for Approval of Compromise and Settlement with Schmidt Oilfield Services and Related Parties* [Docket No. 221], pursuant to which it sought approval of a settlement between the parties. In particular, the settlement includes: (i) mutual releases among the parties to the State Court Action (including releases by and among Gerad Morris, Wil Rounsaville and the Estate); (ii) an obligation of the Debtor to make an prompt payment of \$50,000 to Schmidt; and (iii) an obligation of the parties to execute a notice of dismissal with prejudice of the State Court Action (as removed and transferred to the Bankruptcy Court), promptly after payment of the \$50,000 settlement amount. Pursuant to an Order of the Bankruptcy Court [Docket No. 270] entered on January 8, 2013, the motion was granted and the proposed settlement was approved.

### **K. Executory Contracts and Unexpired Leases**

On November 13, 2012, the Debtor filed its *Motion to Reject All Real Property Leases* [Docket No. 168], pursuant to which the Debtor sought authority to reject all of its unexpired real property leases, effective as of the sooner of: (i) the date that the Debtor vacated any applicable location; or (ii) November 30, 2012. Pursuant to an Order of the Bankruptcy Court entered on December 13, 2012 [Docket No. 235], the motion was granted with the exception that the Bankruptcy Court continued the hearing with regards to that certain lease between the Debtor and WCJ Ridgmar II, Ltd. for approximately 12,222 square feet of commercial space located at 2525 Ridgmar Boulevard, Suite 200, Fort Worth, Texas (the "Headquarters Lease").

On December 12, 2012, the Debtor filed its *First Amended Motion for Authorization to Enter Into Non-Residential Real Property Lease* [Docket No. 228], pursuant to which the Debtor sought authority to enter into a new short-term lease with WCJ Ridgmar II, Ltd. for reduced monthly rent and square footage at 2525 Ridgmar Boulevard, Fort Worth, Texas. Pursuant to an Order entered on December 26, 2012 [Docket No. 254], the Bankruptcy Court authorized the Debtor to enter into the new short-term lease and rejected the Headquarters Lease, effective November 30, 2012.

### **L. Allowance of Claims**

On September 28, 2012, Thomas Petroleum, LLC filed its *Motion for Allowance of an Administrative Claim Pursuant to 11 U.S.C. Section 503(b)(9)* [Docket No. 78], pursuant to which it asserts an administrative expense claim in the amount of \$125,119.65 for fuel allegedly purchased by the Debtor in the ordinary course within the twenty (20) day period preceding the Petition Date. On October 22, 2012, the Debtor filed an objection to the motion [Docket No. 118], arguing that Thomas Petroleum, LLC did not sell goods to the Debtor within the twenty (20) day period preceding the Petition Date, but rather provided the Debtor financial services. The Committee also filed an objection to the motion [Docket No. 117]. On January 15, 2013, Thomas Petroleum filed a notice withdrawing this motion [Docket No. 276].



On October 5, 2012, WCJ Ridgmar 11, LP filed its *Motion for Allowance of Administrative Claim Pursuant to 11 U.S.C. § 503(b) and 11 U.S.C. § 365(d)(3)* [Docket No. 91], pursuant to which it asserted that it was entitled to an administrative expense claim in the amount of \$13,871.54 for September 2012 "stub" rent related to approximately 12,222 square feet of commercial space leased by the Debtor and located at 2525 Ridgmar Boulevard, Fort Worth, Texas. Pursuant to an agreed Order [Docket No. 156] entered by the Bankruptcy Court on November 6, 2012, WCJ Ridgmar 11, LP was awarded an administrative expense claim, in the amount of \$13,871.54.

On October 30, 2012, K & S Leasing, Inc. filed its *Motion to Allow Administrative Claim Pursuant to 11 U.S.C. § 503(b) and 11 U.S.C. § 365(d)(3)* [Docket No. 236], pursuant to which it asserted that it was entitled to an administrative expense claim in the amount of \$5,871.17 for the Debtor's failure to make rental payments on a lease of commercial property located in Hemphill County, Texas during the months of August 2012 through October 2012. Pursuant to an agreed Order [Docket No. 237] entered by the Bankruptcy Court on December 13, 2012, K & S Leasing, Inc. was awarded an administrative expense claim in the amount of \$2,748.46.

#### **M. Extension of Exclusivity**

On December 21, 2012, the Debtor filed its *Expedited Motion to Extend Exclusivity Periods* [Docket No. 247], pursuant to which the Debtor sought 30-day extensions to the exclusive periods provided to it under section 1121(b) and (c)(3) of the Bankruptcy Code. Pursuant to an Order of the Bankruptcy Court [Docket No. 261] entered on January 2, 2013, the motion was granted, thereby extending: (i) the exclusive period during which only the Debtor may file a Chapter 11 plan under section 1121(b) to and including February 6, 2013; and (ii) the exclusive period during which only the Debtor may confirm a Chapter 11 plan under section 1121(c)(3) to and including April 7, 2013, if the Debtor files a Chapter 11 plan on or before February 6, 2013.

#### **N. Bar Dates**

On September 17, 2012, Debtor's counsel served the *Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors and Deadlines*, which advised parties, among other things, that the last date on which Creditors and Interest holders could timely file proofs of Claims or proofs of Interests in the Chapter 11 Case was January 17, 2013 (the "Bar Date"). The Bar Date applies to all Creditors and Interest holders, but does NOT include Governmental Units. Pursuant to an Order of the Bankruptcy Court entered on October 23, 2012 [Docket No. 119], the last day by which Governmental Units may timely file a Claim is March 11, 2013.

### **VII.**

#### **SUMMARY OF THE CLAIMS, CLASSIFICATION AND TREATMENT UNDER THE PLAN**

##### **A. Introduction**

A summary of the principal provisions of the Plan relating to the treatment of Classes of Claims and Interests is set out herein. The summary is qualified in its entirety by the Plan itself, which is controlling in the event of any conflict. Additionally, the estimated amount of

allowable Claims in the various Classes are estimates only and are not intended to be exact determinations. While the Proponents have made every effort to reasonably estimate such amounts, there is no guarantee that such estimates shall constitute an admission on the part of the Debtor to the validity of any Disputed Claims. Any Claim which is not Allowed by an Order of the Bankruptcy Court or pursuant to a settlement approved by an Order of the Bankruptcy Court may be Disallowed or reduced in amount if an objection has been, or is timely hereafter, filed and sustained by the Bankruptcy Court.

## **B. Classification of Claims and Interests**

The Plan provides for the division of Claims against and Interests in the Debtors (except Administrative Claims and Priority Tax Claims) into Classes. A Claim is classified within a particular Class only to the extent that the Claim qualifies under the description of that Class. A proof of Claim asserting a Claim which is properly includable in more than one Class is only entitled to inclusion within a particular Class to the extent that it qualifies under the description of such Class, and shall be included within a different Class(es) to the extent that it qualifies under the description of such different Class(es). The Plan classifies Claims and Interests as follows:

### Unclassified Claims

- Allowed Administrative Claims
- Allowed Priority Tax Claims

### Classified Claims and Interests

- Class 1: Secured Claims of PlainsCapital Bank
- Class 2: Secured Claims of Stone Arch Capital
- Class 3: Secured Tax Claims
- Class 4: Other Secured Claims
- Class 5: Priority Non-Tax Claims
- Class 6: General Unsecured Claims
- Class 7: Subordinated Claims
- Class 8: Interests

## **C. Treatment of Unclassified Claims Under the Plan**

### **1. Treatment of Allowed Administrative Claims**

Pursuant to the Plan, in full and final satisfaction of Allowed Administrative Claims, each Allowed Administrative Claim (including professional fee Claims) shall, unless otherwise agreed to in writing by the Trustee and the holder of an Allowed Administrative Claim, be paid out of Available Cash by the Trust within fifteen (15) days after the later of (a) the Effective Date or (b) becoming an Allowed Administrative Claim; provided, however, that Allowed Administrative Claims that represent liabilities incurred on or after the Petition Date, but prior to the Effective Date, in the ordinary course of the Debtor's business shall be paid in accordance with the agreements related thereto.

Holders of Administrative Claims, other than Allowed Administrative Claims and liabilities which were incurred and paid on or after the Petition Date, but before the Effective

Date, in the ordinary course of the Debtor's business, must file on or before the Administrative Claims Bar Date an application with the Bankruptcy Court for allowance of the Administrative Claim and serve a copy of such application on all parties required to receive notice in the Chapter 11 Case, including the Debtor, the Committee and the UST, and following the Effective Date of the Plan, the Trustee. Notice of such application must include, at a minimum, (a) the name of the holder of the Claim, (b) the amount of the Claim, and (c) the basis for the Claim. ***Failure to file and serve such application and notice by the Administrative Claims Bar Date shall result in the Administrative Claim being forever barred and discharged.***

## **2. Treatment of Allowed Priority Tax Claims**

Pursuant to the Plan, each holder of an Allowed Priority Tax Claim shall, unless otherwise agreed to in writing by the Trustee and the holder, be paid out of Available Cash in an amount equal to the unpaid portion of such Allowed Priority Tax Claim on the first Distribution Date following the Allowance Date for such Claim; provided, however, that any Claim or demand for payment of a Subordinated Tax Penalty Claim shall be Disallowed pursuant to the Plan, and the holder of an Allowed Priority Tax Claim shall not be allowed to assess or attempt to collect such penalty from the Debtor, its Estate, the Trust or its property. To the extent that there is insufficient Available Cash to pay all Claims which have priority over any Allowed Priority Tax Claims, no Distributions will be made on account of Allowed Priority Tax Claims until the Trust holds sufficient Available Cash to pay all Claims holding priority over such Allowed Priority Tax Claims in full, and the Trust Reserve is fully funded. For the avoidance of doubt, the Debtor and Estate retain all rights under section 505 of the Bankruptcy Code with respect to any Priority Tax Claim, all of which rights are deemed automatically transferred to the Trust on the Effective Date.

## **3. Payment of Statutory Fees and Post-Petition Date Taxes**

Furthermore, pursuant to the Plan, all fees payable pursuant to 28 U.S.C. § 1930 and all Claims of Governmental Unit of the type described in section 503(b)(1)(B)-(C) of the Bankruptcy Code shall be treated as Allowed Administrative Claims upon such amounts becoming due and payable by the Debtor or the Trust under applicable non-bankruptcy law, with the dates such amounts become due being treated as their Allowance Date.

## **D. Treatment of Classified Claims and Interests Under the Plan**

### **1. Treatment of Secured Claims of PlainsCapital Bank (Class 1)**

Pursuant to the Plan, the Class 1 Claim shall be a Disputed Claim until the later of (a) February 11, 2013 or such later date agreed to by PlainsCapital in writing, (b) the withdrawal or dismissal of any timely filed objection and/or adversary proceeding against PlainsCapital, or (c) the entry of a Final Order resolving any timely filed objection and/or adversary proceeding against PlainsCapital, and such Final Order results in PlainsCapital holding an Allowed Secured Claim. To the extent that the Class 1 Claim is determined by the Bankruptcy Court to be an Allowed Secured Claim, either in whole or in part, the same shall be paid out of the portion of the Disputed Cash that is subject to the full satisfaction of any senior security interests to PlainsCapital. Such payment shall be made as soon as reasonably practicable following the Allowance Date for the Secured Claim. To the extent any portion of the Claim of PlainsCapital

is not secured by a Lien, such portion of the Claim shall be treated under Class 6 of the Plan or, if so Ordered by the Bankruptcy Court, under Class 7 of the Plan. In accordance with the Plan, the Debtor and the Estate reserve all right to seek a valuation of any collateral asserted by PlainsCapital Bank related to its Secured Claim, which rights are deemed transferred to the Trust as of the Effective Date.

## **2. Treatment of Secured Claims of Stone Arch Capital II, LP (Class 2)**

Pursuant to the Plan, the Class 2 Claim shall be a Disputed Claim until the later of (a) February 11, 2013 or such later date agreed to by Stone Arch Capital in writing, (b) the withdrawal or dismissal of any timely filed objection and/or adversary proceeding against Stone Arch Capital, or (c) the entry of a Final Order resolving any timely filed objection and/or adversary proceeding against Stone Arch Capital, and such Final Order results in Stone Arch Capital holding an Allowed Secured Claim. To the extent that the Class 2 Claim is determined by the Bankruptcy Court to be an Allowed Secured Claim, either in whole or in part, the same shall be paid out of the portion of the Disputed Cash, that is subject to the full satisfaction of any senior security interests to Stone Arch Capital. Such payment shall be made as soon as reasonably practicable following the Allowance Date for the Secured Claim. To the extent any portion of the Claim of Stone Arch Capital is not secured by a Lien, such portion of the Claim shall be treated under Class 6 of the Plan or, if so Ordered by the Bankruptcy Court, under Class 7 of the Plan. In accordance with the Plan, the Debtor and the Estate reserve all right to seek a valuation of any collateral asserted by Stone Arch Capital related to its Secured Claim, which rights are deemed transferred to the Trust as of the Effective Date.

## **3. Secured Tax Claims (Class 3)**

Pursuant to the Plan, in full and final satisfaction of Allowed Secured Tax Claims, and any Lien securing the same, each holder of an Allowed Secured Tax Claim shall, unless otherwise agreed between the Claimant and the Trustee, be fully satisfied within thirty (30) days after the later of (a) the Effective Date or (b) becoming an Allowed Secured Tax Claim. Each holder of an Allowed Secured Tax Claim shall retain all Liens securing the same, until paid, and the Plan does not modify or affect the validity, extent or priority of such Liens.

All rights of the Debtor and the Estate under section 505 of the Bankruptcy Code with respect to any Class 3 Claim are preserved under the Plan and are deemed transferred to the Trust automatically on the Effective Date. The Debtor and the Estate reserve all rights to surcharge, under section 506(c) of the Bankruptcy Code or otherwise, the holder of a Class 3 Claim and any collateral securing the same, which rights are deemed transferred to the Trust as of the Effective Date.

## **4. Other Secured Claims (Class 4)**

Pursuant to the Plan, in full and final satisfaction of Allowed Other Secured Claims, and any Lien securing the same, each Allowed Other Secured Claim shall, unless otherwise agreed between the Claimant and the Trustee, be fully satisfied within thirty (30) days after the later of (a) the Effective Date or (b) becoming an Allowed Other Secured Claim. Each holder of an Allowed Other Secured Claim shall retain all Liens securing the same, until paid, and the Plan does not modify or affect the validity, extent or priority of such Liens. To the extent any or all

assets securing an Allowed Class 4 Claim has been sold or otherwise disposed of by the Debtor or the Trustee, such holder of an Allowed Class 4 Claim shall be paid from portion of the Disputed Cash that is subject to the full satisfaction of any senior security interests to the holder of an Allowed Other Secured Claim. To the extent any portion of an Allowed Class 4 Claim is unsecured, it will receive the treatment provided for Class 6. The Debtor and the Estate reserve all rights to surcharge, under section 506(c) of the Bankruptcy Code or otherwise, the holder of a Class 4 Claim and any collateral securing the same, which rights are deemed transferred to the Trust as of the Effective Date.

**5. Priority Non-Tax Claims (Class 5)**

Pursuant to the Plan, in full and final satisfaction of Allowed Priority Non-Tax Claims, each Allowed Priority Non-Tax Claim shall, unless otherwise agreed, be paid in full from Available Cash within thirty (30) days after the later of (a) the Effective Date or (b) becoming an Allowed Priority Non-Tax Claim. For the avoidance of doubt, no Distributions shall be made to holders of Class 5 Claims unless holders of Allowed Administrative Claims and Allowed Priority Tax Claims have been paid in full and the Trust Reserve contains sufficient Available Cash to pay (a) any Disputed Administrative Claim and Disputed Priority Tax Claim in full, or in such other amounts as agreed upon in writing by the holder of such Claim and the Trustee, and (b) actual and anticipated Trust Expenses.

**6. General Unsecured Claims (Class 6)**

Pursuant to the Plan, all Allowed Class 6 Claims shall be paid from Available Cash Pro Rata by the Trustee on any Distribution Date when such Available Cash exists, and any such Claims that are subsequently Allowed shall be paid Pro Rata on a cumulative basis from Available Cash on the next Distribution Date after the Allowance Date. For the avoidance of doubt, no Distributions shall be made to holders of Class 6 Claims unless holders of Allowed Administrative Claims, Allowed Priority Tax Claims, and Allowed Class 5 Priority Non-Tax Claims have been paid in full and the Trust Reserve contains sufficient Available Cash to pay (a) any Disputed Administrative Claim, Disputed Priority Tax Claim, and Disputed Class 5 Priority Non-Tax Claim in full, or in such other amounts as agreed upon in writing by the holder of such Claim and the Trustee, and (b) actual and anticipated Trust expenses.

**7. Subordinated Claims (Class 7)**

Pursuant to the Plan, all Allowed Class 7 Claims shall be paid from Available Cash Pro Rata by the Trustee on any Distribution Date when such Available Cash exists, and any such Claims that are subsequently Allowed shall be paid Pro Rata on a cumulative basis from Available Cash on the next Distribution Date after the Allowance Date. For the avoidance of doubt, no Distributions shall be made to holders of Class 7 Claims unless holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 5 Priority Non-Tax Claims, and Allowed Class 6 General Unsecured Claims have been paid in full and the Trust Reserve contains sufficient Available Cash to pay (a) any Disputed Administrative Claim, Disputed Priority Tax Claim, Disputed Class 5 Priority Non-Tax Claim, and Disputed Class 6 General Unsecured Claim in full, or in such other amounts as agreed upon in writing by the holder of such Claim and the Trustee, and (b) actual and anticipated Trust expenses.



## **8. Interests (Class 8)**

Pursuant to the Plan, all Allowed Class 8 Interests shall be deemed cancelled on the Effective Date; provided, however, that holders of Class 8 Interests as of the Effective Date, or their successors or assigns, shall be paid from Available Cash Pro Rata by the Trustee on any Distribution Date when such Available Cash exists, and any such Interests that are subsequently Allowed shall be paid Pro Rata on a cumulative basis from Available Cash on the next Distribution Date after the Allowance Date. For the avoidance of doubt, no Distributions shall be made to holders of Class 8 Interests unless holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 5 Priority Non-Tax Claims, Allowed Class 6 General Unsecured Claims, and Allowed Class 7 Subordinated Claims have been paid in full and the Trust Reserve contains sufficient Available Cash to pay (a) any Disputed Administrative Claim, Disputed Priority Tax Claim, Disputed Class 5 Priority Non-Tax Claim, Disputed Class 6 General Unsecured Claim, and Disputed Class 7 Subordinated Claim in full, or in such other amounts as agreed upon in writing by the holder of such Claims and the Trustee, and (b) actual and anticipated Trust expenses.

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

### **A. Adjudication of Available Cash**

Unless otherwise compromised prior to the Confirmation Hearing by the Debtor and the Committee, on the one hand, and PlainsCapital Bank and/or Stone Arch Capital on the other hand, at the Confirmation Hearing the Bankruptcy Court shall determine which and how much of the Debtor's Cash is not the "cash collateral" of PlainsCapital Bank and/or Stone Arch Capital, as defined in the Bankruptcy Code, with such resulting Cash that is not "cash collateral" constituting Available Cash. Unless raised by separate motion, this Plan shall constitute a motion for a determination of the extent of cash collateral of PlainsCapital Bank and/or Stone Arch Capital under section 363 of the Bankruptcy Code, and requesting authority to use Cash that is not cash collateral for purposes of the Plan, specifically requesting an Order from the Bankruptcy Court to the effect that neither PlainsCapital Bank nor Stone Arch Capital have a perfected security interest or Lien under applicable state law in or to any Vehicle of the Debtor and the Estate, or to any Cash proceeds from the sales of any such Vehicle, that was sold after the Petition Date and the Lien interests of PlainsCapital and/or Stone Arch Capital is not noted on the certificate of title for such Vehicle.

### **B. Limited Settlement Offer Related to Available Cash**

A dispute presently exists between the Debtor and PlainsCapital Bank as to whether or not PlainsCapital Bank has a Lien to any equipment or item that was added to a Vehicle which was sold by the Debtor after the Petition Date as part of the Vehicle, even if PlainsCapital Bank did not have a perfected Lien in and to the Vehicle itself. As an example, the Debtor may have sold a truck that had a welder attached to it and such welder was sold together with the truck for one aggregate sum. It is possible that the Bankruptcy Court may find that PlainsCapital Bank did not have a perfected Lien in the truck, but did have a perfected Lien in the welder (subject to the claims of the Debtor to avoid or otherwise invalidate the underlying Lien against the Debtor's equipment). Ascertaining with certainty which portion of any Vehicle proceeds are attributable



to the Vehicle and which to any add-on will be complicated, burdensome, risky, and expensive. In addition, Stone Arch Capital also asserts that it has a perfected Lien against any equipment or item that was added to a Vehicle, but not in or to the Vehicle itself. Accordingly, with respect to any equipment or item added to a Vehicle which has not been previously appraised by Ritchie Bros. and without prejudice to any and all other issues, arguments, claims, and rights that may exist between the Debtor, the Estate, the Committee, PlainsCapital Bank, and Stone Arch Capital, including, without limitation, any and all objections that either PlainsCapital Bank or Stone Arch Capital may have to this Plan and any and all arguments that either PlainsCapital Bank or Stone Arch Capital may have regarding any issue related to Available Cash, this Plan constitutes a limited settlement offer to PlainsCapital Bank and Stone Arch Capital which they may accept at any time before ten (10) calendar days prior to the deadline set by the Bankruptcy Court for voting on the Plan, by filing a notice accepting the same in the Chapter 11 Case. Absent such a filing, PlainsCapital Bank and/or Stone Arch Capital will be deemed to have rejected the limited settlement offered in this section 7.2 of the Plan. If PlainsCapital Bank and/or Stone Arch Capital accept this limited settlement offer, and if the Bankruptcy Court otherwise confirms the Plan, including over any rejection of the Plan by PlainsCapital Bank or Stone Arch Capital, or objection to the Plan by PlainsCapital Bank or Stone Arch Capital, [\_\_\_\_%] of the net proceeds received by the Debtor from the sale of all of its Vehicles after the Petition Date, regardless of whether the Vehicle had an add-on or equipment at the time of sale, shall be conclusively deemed to have been attributable to "equipment" in which PlainsCapital Bank and Stone Arch Capital hold a Lien, albeit a Lien that is subject to subsequent avoidance and contest. In such case, said [\_\_\_\_%] will not be Available Cash but will instead be included in Disputed Cash, to be treated as otherwise provided for Disputed Cash under this Plan. For the avoidance of doubt, in such case the Debtor and the Estate, and the Trust, retain all of their claims and causes of action concerning the potential avoidance and recovery of such [\_\_\_\_%] notwithstanding the limited settlement concerning the allocate of sale proceeds between Vehicle and equipment. Nothing herein shall be deemed to effect the priority of any Lien held by PlainsCapital Bank and Stone Arch Capital in or to the equipment or the Disputed Cash.

### **C. Post-Confirmation Corporate Governance**

On the Effective Date of the Plan, the New Vanderra Membership Unit shall be issued to the Trust, and the Trust shall be the sole holder of membership units in the post-Confirmation Debtor as of that date. All remaining officers and directors of the Debtor shall be terminated on the Effective Date, at which time Trustee shall become the sole officer of the Debtor, but shall be entitled to appoint other officers for the Debtor as needed to effectuate the Plan in compliance with the Trust Agreement. This issuance of the New Vanderra Membership Unit and appointment of the Trustee shall be effective without the need for any execution or amendment of any corporate documents of the Debtor or any filings with the State of Texas or other applicable authorities. The Trustee may file appropriate documentation with the State of Texas and other jurisdiction to carry out any action necessary to continue the Debtor's corporate existence and effectuate the provisions of the Plan.

## **D. The Trust**

### **1. Creation and Purpose of the Trust**

The Plan provides for the establishment of the Trust on the Effective Date of the Plan. The Proponents, the Estate, the Trustee and all Creditors will be deemed to have adopted and approved the Trust Agreement, establishing the Trust as of the Effective Date of the Plan. As discussed above, the purpose of the Trust is to effectuate the administration of the Plan for the benefit of Creditors with Allowed Claims and the orderly liquidation and disposition of the Estate's remaining assets.

### **2. Transfer of Trust Assets to the Trust**

Pursuant to the Plan, the Trust Assets shall be transferred to the Trust, free and clear of all Liens, Claims, encumbrances, and interests, except for any Lien, Claim, encumbrance, or interest specifically and explicitly preserved by, or created under, this Plan, without the need for any action by the Debtor or the Bankruptcy Court. The Trustee may use his powers as officer of the Debtor as necessary to facilitate such transfers. For the avoidance of doubt, the transfer of the Disputed Cash to the Trust shall be subject to all Liens against the same, to the extent that such Liens are valid, perfected, enforceable, and unavoidable, and subject to all of the Debtor's and Estate's rights to contest the same. The transfer of the Available Cash to the Trust shall be free and clear of all Liens, Claims, encumbrances, and interests, and shall be subject only to being used by the Trust to pay such obligations as are provided for in this Plan.

### **3. Dissolution of Trust**

As soon as practicable after the Final Distribution, the Trustee shall dissolve the Trust pursuant to the Trust Agreement.

### **4. Powers of the Trustee**

Pursuant to the Plan, the Trustee shall have all the powers of the Debtor as debtor-in-possession under the Bankruptcy Code, including without limitation, the powers to assign executory contracts and unexpired leases under section 365 of the Bankruptcy Code and the powers to sell Trust Assets free and clear of Liens, claims, and interests under section 363 of the Bankruptcy Code, subject to the requirements and restrictions of such provisions and other applicable law.

### **5. The Trust Advisory Board**

The Plan provides that, on the Effective Date, the officers and board of directors of the Debtor shall be deemed removed from office, and the operations of the Trust, in accordance with the provisions of the Plan and the Trust Agreement, shall become the general responsibility of the Trustee subject to the oversight of the Trust Advisory Board, pursuant to and in accordance with the provisions of the Plan and the Trust Agreement.

## **6. Information and Reporting**

Pursuant to the Plan, the Trustee shall file post-confirmation reports with the Bankruptcy Court no less often than as soon as practicable after the end of every calendar quarter with respect to the status of the execution and implementation of the Plan, including amounts expended by the Trust, the distributions made by the Trust, and the status and size of the Trust Reserve. These post-confirmation reports shall be served on the Post-Confirmation Service List, and any other Entity requesting service of the same.

The Trust Advisory Board may rely, and shall be fully protected in acting or refraining from acting, upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document which they reasonably believe to be genuine and to have been signed or presented by the proper party or parties or, in the case of cables, telecopies and telexes, to have been sent by the proper party or parties, and the Trust Advisory Board may conclusively rely as to the truth of the statements and correctness of the opinions expressed therein.

## **7. Termination of the Trustee and Trust Advisory Board**

The Plan provides that the duties, responsibilities, and powers of the Trustee and the Trust Advisory Board shall terminate on the date of the Trust is dissolved in accordance with the Trust Agreement.

## **8. Reliance by the Trust Advisory Board**

Pursuant to the Plan, the Trust Advisory Board may rely, and shall be fully protected in acting or refraining from acting, upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document which they reasonably believe to be genuine and to have been signed or presented by the proper party or parties or, in the case of cables, telecopies and telexes, to have been sent by the proper party or parties, and the Trust Advisory Board may conclusively rely as to the truth of the statements and correctness of the opinions expressed therein.

## **9. Trustee Standing**

After the Effective Date, and without limiting the Trustee's standing otherwise, and for the avoidance of doubt only, the Trustee shall have standing to (a) object to the allowance of any Claim or Administrative Claim and (b) continue to prosecute any objections or adversary proceedings filed or commenced by the Debtor or the Committee prior to the Effective Date. The Trustee shall be substituted for such the Debtor or the Committee automatically with respect to such objections or adversary proceedings commenced without further order of the Bankruptcy Court.

## **IX. PRESERVED CAUSES OF ACTION**

Pursuant to the Plan, among the assets that will vest in the Trust on the Effective Date are Causes of Action, Avoidance Actions, the Bank Action and claims or defenses of the Debtor in any proceeding commenced by the Debtor prior to the Effective Date. The Plan contains

definitions for "Causes of Action," "Avoidance Actions" and the "Bank Action," and all parties are strongly encouraged to review those definitions in the Plan and, if appropriate, seek advice of counsel to determine whether they may be a defendant in a preserved Cause of Action, Avoidance Action or the Bank Action.

The Plan preserves all Causes of Action, unless expressly provided otherwise, and provides for them to be asserted by the Trustee from and after the Effective Date of the Plan. Except as expressly otherwise provided in the Plan, on and after the Effective Date, the Trustee shall have authority and standing to prosecute, enforce, pursue, sue on, settle or compromise (or decline to do any of the foregoing) such Causes of Action, Avoidance Actions or Bank Action.

Pursuant to section 542 of the Bankruptcy Code, an entity, other than a custodian, in possession, custody or control, during the case, of property of the bankruptcy estate can be compelled to turn over to the trustee (or debtor in possession pursuant to section 1107 of the Bankruptcy Code) such property or the value of such property, unless such property is of inconsequential value or benefit to the estate. Pursuant to sections 544, 548 and 550 of the Bankruptcy Code, a trustee (or debtor in possession pursuant to section 1107 of the Bankruptcy Code) may avoid fraudulent transfers of a debtor's interests in property and recover, for the benefit of estate, any such transfer from immediate or subsequent transferees. Pursuant to sections 547 and 550, a trustee (or debtor in possession pursuant to section 1107 of the Bankruptcy Code) may avoid preferential payments made within ninety (90) days immediately preceding the commencement of a Chapter 11 Case.

**PLEASE TAKE NOTICE: WITH THE EXCEPTION OF THOSE CAUSES OF ACTION THAT ARE EXPRESSLY RELEASED OR WAIVED UNDER THE TERMS OF THE PLAN OR FINALLY ADJUDICATED BY ORDER OF THE BANKRUPTCY COURT, ALL CAUSES OF ACTION OF THE DEBTOR, THE COMMITTEE OR THE ESTATE (INCLUDING, WITHOUT LIMITATION, THE BANK ACTION AND ALL AVOIDANCE ACTIONS), WHETHER OR NOT SPECIFIED HEREIN, WILL BE PRESERVED AND TRANSFERRED TO THE TRUST UNDER THE PLAN FOR ASSERTION BY THE TRUSTEE. THE TRUSTEE SHALL HAVE THE AUTHORITY AND STANDING TO PROSECUTE, ENFORCE, PURSUE, SUE ON, SETTLE OR COMPROMISE (OR DECLINE TO DO ANY OF THE FOREGOING) CAUSES OF ACTION IN ACCORDANCE WITH SECTION 1123(b)(3) OF THE BANKRUPTCY CODE.**

Without limiting the effectiveness or generality of the foregoing, and out of an abundance of caution, the following claims and causes of action are specifically preserved and reserved under the Plan and are deemed transferred automatically to the Trust as of the Effective Date:

- (a) any claim, cause of action, or adversary proceeding then pending;
- (b) the Bank Action, including all claims and causes of action against PlainsCapital Bank, including, but not limited to: (i) all potential claims related to the validity, extent, or perfection of any Lien or security interest of PlainsCapital Bank under applicable state perfection and other laws and under the Bankruptcy Code; (ii) all potential claims related to the avoidance of any Lien or security

interest of PlainsCapital Bank, under section 544 of the Bankruptcy Code (including any applicable state fraudulent transfer statute), section 547 of the Bankruptcy Code, or any other applicable section of the Bankruptcy Code, including related to the execution of new loan or restated loan and security documents and agreements issued by the Debtor to PlainsCapital Bank in June or July 2012, and further including any new UCC financing statements filed or recorded by PlainsCapital Bank; (iii) the recovery and retention under sections 550 and 551 of the Bankruptcy Code, of any transfer avoided; (iv) all potential claims to avoid, as a preference under section 547 of the Bankruptcy Code or otherwise, the payment to PlainsCapital Bank of approximately \$3 million in June or July 2012; (v) all potential claims to avoid payments made to PlainsCapital Bank in the ninety (90) days prior to the Petition Date as preferences under section 547 of the Bankruptcy Code; (vi) all potential claims for breach of contract and wrongful setoff related to the setoff by PlainsCapital Bank of approximately \$960,275.15 on or about September 7, 2012, including for attorney's fees, consequential damages, and all other damages; (vii) the avoidance, under sections 547 and 533 of the Bankruptcy Code, of the setoff by PlainsCapital Bank of approximately \$960,275.15 on or about September 7, 2012, and the recovery thereof under sections 550 and 551 of the Bankruptcy Code; and (viii) all potential claims as to the lack of perfection of any Lien or interest of PlainsCapital Bank resulting from the filing of any UCC financing statement in the wrong jurisdiction;

(c) all claims and causes of action against Stone Arch Capital, including, but not limited to (i) potential recharacterization of any obligation of the Debtor to Stone Arch Capital and recharacterization or avoidance of any security agreement or Lien instrument issued in connection therewith; (ii) potential subordination, equitable or otherwise, under section 510 of the Bankruptcy Code; (iii) all potential claims related to the Debtor's deepening insolvency, or aiding and abetting any breach of fiduciary duty; (iv) all potential claims to avoid, as preferences or insider preferences, under section 547 of the Bankruptcy Code, any payment made by the Debtor to Stone Arch Capital, and the avoidance and recovery of any such payment under sections 550 or 551 of the Bankruptcy Code;

(d) all claims and causes of action to avoid, as preferences or insider preferences, under section 547 of the Bankruptcy Code, and to recover, under section 550 or section 551 of the Bankruptcy Code, each of the transfers listed on **Exhibit "E"** to this Disclosure Statement from each of the transferees listed on said exhibit, and any other immediate or mediate transferee thereof. Said exhibit and this provision of the Plan are provided to give maximum notice of potential preference claims as the Debtor and the Committee are presently aware of and shall in no way act as a limitation on any other potential preference claims or any other claims that may exist, including by way of *expressio unius est exclusio alterius* or any other applicable doctrine or rule of contractual interpretation. It is the specific intention of this Plan that each and every preference, avoidance, fraudulent transfer, and any other claim or cause of action, whether arising before or after the Petition Date, and whether arising under state law or the Bankruptcy Code, be preserved and retained under this Plan and be transferred to the Trust on the Effective Date of this Plan.



**X.**

**OTHER SIGNIFICANT PLAN PROVISIONS**

**A. Treatment of Executory Contracts and Unexpired Leases**

Section 365 of the Bankruptcy Code sets out various provisions regarding executory contracts and unexpired leases. Pursuant to the Plan, all executory contracts and leases of the Debtor that were not previously assumed and assigned or rejected by the Debtor are deemed rejected, unless identified as being assumed in the Plan Supplement, or otherwise dealt with by the Plan, the Confirmation Order or any other Order of the Bankruptcy Court entered prior to the Effective Date.

The Plan further provides that any Claim for damages arising from the rejection of an executory contract or unexpired lease pursuant to the Plan must be asserted in a proof of Claim filed *by not later than thirty (30) days after the Effective Date of the Plan. Any holder of such a rejection damages Claim that fails to File a proof of Claim on or before said deadline shall be deemed to have waived such Claim in full, and such Claim shall be deemed Disallowed and discharged.*

**B. Distributions Under the Plan**

**1. Allowed Claims**

Distributions under the Plan will only be made to Creditors holding Allowed Claims. A Claim or Interest is "Allowed" under the Plan: (a) to the extent that it is listed in the Schedules in a liquidated, non-contingent and undisputed amount, but only if no proof of Claim or proof of Interest is filed with the Bankruptcy Court to evidence such Claim or Interest on or before the Bar Date and no objection thereto has been timely filed; (b) as evidenced by a proof of Claim or proof of Interest filed on or before the Bar Date, but only to the extent asserted in a liquidated amount, and only if no objection to the allowance of the Claim or Interest or no motion to expunge the proof of Claim or Interest has been timely filed; or (c) to the extent allowed by a Final Order of the Bankruptcy Court.

**2. Delivery of Distributions**

The Plan provides that, subject to Bankruptcy Rule 9010 and the terms of the Trust Agreement, Distributions to holders of Allowed Claims will be made by mail at (a) the address of each such holder as set forth on the proofs of Claim filed by such holders, (b) the address set forth in any written notice of address change delivered to the Trustee after the date of any related proof of Claim, or (c) the address reflected in the Schedules if no proof of Claim is filed and the Trustee has not received a written notice of address change. If any Distribution is returned as undeliverable, no further Distributions to such holder will be made unless and until the Trustee is notified in writing of such Claimholder's then current address. Such Distributions shall be placed in the Trust Reserve until such time as all other Trust Assets have been distributed. At such time, all such Distributions, to the extent the same totals over \$1,000.00, shall be distributed Pro Rata to all Claimants whose Claims have not yet been paid in full.



### **3. Unclaimed Distributions and Uncashed Checks**

In accordance with the terms of the Plan, unclaimed Distributions shall be held in the Trust Reserve for the benefit of the potential Claimants. All claims for undeliverable Distributions must be made on the ninetieth (90th) day following the date on which delivery the Distribution was initially mailed. The Claim upon which an undelivered or unclaimed Distribution was made shall be treated as a Disputed Claim until such period as passed, and after that shall be treated as Disallowed in full by Final Order of the Bankruptcy Court. After such date, all unclaimed Distributions will revert to the Trust for deposit into the Available Cash fund to be reallocated and distributed to the holders of Allowed Claims, and the Claim of any holder with respect to such Distribution will be discharged and forever barred. Checks issued in respect of Allowed Claims will be null and void if not negotiated within ninety (90) days after the date of issuance thereof, and such holder will forfeit its right to such distribution. In no event shall any funds escheat to the State of Texas.

### **4. Due Authorization by Claimants**

Pursuant to the Plan, each and every Claimant who elects to participate in the Distributions provided for herein warrants that the Creditor is authorized to accept in consideration of its Claim against the Debtor the Distributions provided for in this Plan and that there are no outstanding commitments, agreements or understandings, express or implied, that may or can in any way defeat or modify the rights conveyed or obligations undertaken by the Creditor under the Plan.

### **5. Setoffs**

The Plan also generally allows the Trustee, pursuant to section 502(d) or 553 of the Bankruptcy Code or any applicable non-bankruptcy law, to setoff against any Distribution to be on account of an Allowed Claim any claims, rights or Causes of Action held by the Debtor and/or the Trust against the holder of the Allowed Claim or in relation to the Allowed Claim, and further provides that neither the failure to effect such a setoff nor the allowance of any Claim shall constitute a waiver or release by the Debtor or the Trust of any such claims, rights or Causes of Action. If the Debtor or the Trust fails to setoff against a Claim and seeks to collect from the holder of such Claim after Distribution to that holder pursuant to the Plan, the Debtor or the Trust, as applicable, shall be entitled to full recovery on the claims of the Debtor, the Estate or the Trust, if any, against the holder of such Claim.

### **6. Additional Charges**

Under the terms of the Plan, no interest, penalty, attorney's fee or late charges shall be allowed or paid with respect to any Claim, except as may be expressly provided in the Plan or allowed by Final Order of the Bankruptcy Court.

### **7. Compliance with Tax Requirements**

In connection with the Plan, and as fully governed by the Trust Agreement, the Trustee shall comply with all withholding and reporting requirements imposed on it by any Governmental Unit, and all Distributions pursuant to the Plan shall be subject to such withholding and reporting requirements.

## **8. De Minimis Distributions and Rounding**

Pursuant to the Plan, Ratable Distributions to holders of Allowed Claims will not be made if such Distribution will result in a Distribution amount of less than \$25.00, unless a request therefore is made in writing to the Trustee. The Plan also provides that, where the calculation of a Distribution results in a fraction of a cent owing, the calculation shall be rounded down to the nearest whole cent for purposes of paying (or reserving) the Distribution.

## **9. Disputed Cash**

The Plan requires the Trustee to segregate the Disputed Cash from all other Trust Assets and hold the Disputed Cash in a separate bank account. Under the terms of the Plan, Disputed Cash shall not be available to pay any Claims or Trust expenses unless and until (a) the Bankruptcy Court enters a Final Order disallowing the Secured Claim asserting a security interest in the Disputed Cash, in which case the funds held in such account that are no longer Disputed Cash shall be transferred to the Trust Reserve for Distribution or reserve in accordance with this Plan, or (b) a Secured Claim asserting a security interest in the Disputed Cash becomes Allowed, in which case the holder of the Allowed Secured Claim will receive the treatment provided for in this Plan.

## **C. Means for Resolving Disputed Claims**

Pursuant to the Plan, all objections to Claims must be filed on or before the Claims Objection Deadline, which is one hundred and twenty (120) days after the Effective Date of the Plan, unless extended by the Bankruptcy Court for cause shown. Any Disputed Claim to which an objection is not filed on or before the Claims Objection Deadline will be deemed to constitute an Allowed Claim under the Plan following the Claims Objection Deadline. Pursuant to the Plan, only the Trustee may file objections to Claims, but a party in interest that would have standing to object to a Claim absent the Plan may, on or before the Claims Objection Deadline, file a motion with the Bankruptcy Court requesting standing to object to a Claim so long as the movant has made a prior written demand to the Trustee to object to the Claim and the Trustee has unjustifiably refused or failed to respond to such demand. Any such motion filed by the Claims Objection Deadline shall, if granted, toll the Claims Objection Deadline solely with respect to the Claim which is the subject of the motion, until and including the date which is ten (10) business days following the date of entry of the Bankruptcy Court's granting Order.

Under the terms of the Plan, until a Contingent Claim becomes an Allowed Claim or is Disallowed, the Claim will be treated as a Disputed Claim for all purposes under the Plan. The holder of a Contingent Claim will be entitled to a Distribution under the Plan only when the Contingent Claim becomes an Allowed Claim. Any Contingent Claim for reimbursement or contribution held by a Person that may be liable with the Debtor on a Claim of a Creditor is Disallowed as of the Effective Date if: (a) that Creditor's Claim is Disallowed; (b) the Claim for reimbursement or contribution is contingent as of the Effective Date; or (c) that Person asserts a right of subrogation to the rights of the Creditor under section 509 of the Bankruptcy Code.

To facilitate the timely and effective administration of Claims, the Plan further provides that, except as otherwise expressly contemplated by the Plan, following the later of the Effective Date of the Plan or the applicable Bar Date, no original or amended proof of Claim may be filed

in the Chapter 11 Case to assert a Claim against the Estate without prior authorization of the Bankruptcy Court, and any such proof of Claim which is filed without such authorization will be deemed null, void and of no force or effect; provided, however, that the holder of a Claim that has been evidenced in the Chapter 11 Case by the filing of a proof of Claim on or before the Bar Date shall be permitted to file an amended proof of Claim in relation to such Claim at any time if the sole purpose of the amendment is to reduce the amount of the Claim asserted.

The Plan further provides that, at any time after the Confirmation Date and before the Effective Date, notwithstanding anything in the Plan to the contrary, the Debtor may settle some or all of the Disputed Claims subject to obtaining necessary Bankruptcy Court approval. Following the Effective Date, and without the necessity of notice and Bankruptcy Court approval, the Trustee will have the authority to resolve any Disputed Claim which is the subject of a timely-filed objection if the resolution will result in the Claim being Allowed in an amount of no greater than \$50,000.00 more than either: (i) the liquidated, non-disputed and non-contingent amount of the Claim as listed in the Debtor's Schedules; or (ii) the amount of the Claim as acknowledged by the Debtor in an objection thereto. Any resolution of a Disputed Claim under the above-parameters shall be evidenced by a notice filed with the Bankruptcy Court. All other settlements involving Disputed Claims to which timely-filed objections have been lodged will be subject to notice and Bankruptcy Court approval, unless ordered otherwise by the Bankruptcy Court upon separate motion and notice in the Chapter 11 Case. Subject to section 10.5 of the Plan, such settlements of Disputed Claims may also settle Causes of Action.

Finally, the Plan provides that, at any time after the Confirmation Date and before the Effective Date, notwithstanding anything in this Plan to the contrary, the Debtor may settle some or all of the Causes of Action subject to obtaining any necessary Bankruptcy Court approval. Following the Effective Date, and without the necessity of notice and Bankruptcy Court approval, the Trustee shall have the authority to settle any Cause of Action for an amount of not lesser than \$50,000.00 from the liability asserted in such Cause of Action. All other settlements involving Causes of Action shall be subject to notice and Bankruptcy Court approval, unless ordered otherwise by the Bankruptcy Court upon separate motion and notice in the Chapter 11 Case.

#### **D. Conditions to Confirmation and Effectiveness of the Plan**

In addition to meeting the requirements of section 1129 of the Bankruptcy Code, in order for the Plan to be confirmed, the Bankruptcy Court must have entered the Confirmation Order in a form and substance satisfactory to the Proponents, which must include, among other things, findings of fact and/or conclusions of law that: (a) enjoin and restrain all Creditors and Interest holders of and in the Debtor from asserting any Lien, Claim, interest or encumbrance against the Debtor, the Estate, the Trust or the Trust Assets, unless such Lien, Claim, interest or encumbrance is expressly reserved hereunder; (b) reserve jurisdiction of the Bankruptcy Court to implement and enforce the Plan; (c) provide, pursuant to section 1125(e) of the Bankruptcy Code, that Persons who have solicited acceptances or rejections of the Plan have acted in good faith and in compliance with the provisions of the Bankruptcy Code, and are not liable on account of such solicitation or participation for violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan; and (d) find that the Plan and they payments required hereunder are feasible.

Following confirmation of the Plan, the following conditions precedent must be met before the Plan will become effective:

- (a) The Confirmation Order shall have become a Final Order;
- (b) Execution of definitive documentation required to consummate the transactions contemplated in the Plan and satisfaction of the conditions precedent, if any, set forth therein in accordance with the terms thereof;
- (d) All other actions, documents and agreements necessary to implement the Plan shall have been effected or executed; provided, however, that if the Effective Date has not occurred on or before the date that is sixty (60) days following the first date on which the Confirmation Order becomes a Final Order, then this Plan shall be deemed to be revoked and its terms null and void unless the Bankruptcy Court Orders otherwise.

Under the terms of the Plan, on or before ten (10) Business Days after the occurrence of the Effective Date, the Debtor shall mail or cause to be mailed to all holders of Claims and Interests a notice that informs such holders of the following: (a) entry of the Confirmation Order; (b) occurrence of the Effective Date; (c) the deadline to file applications for Administrative Claims; and (d) such other matters that the Debtor deems appropriate.

#### **E. Effects of Confirmation of the Plan; Injunction and Exculpation**

##### **1. Legally Binding Effect of Plan**

Upon the Effective Date of the Plan, the Plan and each of its provisions will be binding on all holders of Claims and/or Interests, and all other parties in interest, whether or not they accept this Plan. On and after the Effective Date, all holders of Claims and Interests shall be precluded and enjoined from asserting any Claim against the Debtor, the Trust or the Trust Assets based on any transaction or other activity of any kind that occurred prior to the Confirmation Date except as permitted under the Plan.

##### **2. Vesting of Property of Debtor in Trust**

Upon the Effective Date of the Plan, all property of the Debtor's Estate shall vest in and become the property of the Trust, and the Trustee shall have the right, *inter alia*, to act and prosecute actions in the name of the Debtor.

##### **3. Liens, Claims, Interests and Encumbrances**

Under the terms of the Plan, except as specifically provided therein or in the Confirmation Order, all property vesting in and becoming property of the Trust shall be free and clear of all Liens, claims, interests and other encumbrances, as of the Effective Date of the Plan.

#### **4. Preservation of Avoided Transfers and Liens**

The Estate and then the Trust shall retain and preserve as Estate property and then Trust Assets transfers and Liens avoided with respect to property of the Estate or Trust Assets in accordance with section 551 of the Bankruptcy Code.

#### **5. Protection of Certain Parties in Interest**

Provided the respective officers, directors, shareholders, members, representatives, attorneys, financial advisors, and agents of the Debtor, the Trust, the Trustee, and the Committee act in good faith, they will not be liable to any holder of a Claim or Interest, or other party with respect to any action, forbearance from action, decision, or exercise of discretion in connection with: (a) the operation of the Debtor; (b) the proposal or implementation of any of the transactions provided for, or contemplated in, the Plan or the Trust Agreement; or (c) the administration of the Plan or the assets and property to be distributed pursuant to the Plan and the Trust Agreement; other than for fraud, willful misconduct or gross negligence. The Debtor, the Trust Advisory Board, the Trustee, the Committee, and their respective affiliates, officers, directors, shareholders, members, representatives, attorneys, financial advisors, and agents may rely upon the opinions of counsel, certified public accountants, and other experts or professionals employed by the Debtor, the Trustee and Committee respectively, and such reliance will conclusively establish good faith. In any action, suit or proceeding by any holder of a Claim or Interest or other party in interest contesting any action by or non-action of, the Debtor, the Committee, Trust Advisory Board, Trustee, or their respective affiliates, officers, directors, shareholders, members, representatives, attorneys, financial advisors, and agents as not being in good faith, the reasonable attorneys' fees and costs of the prevailing party will be paid by the losing party and as a condition to going forward with such action, suit, or proceeding at the outset thereof, all parties thereto will be required to provide appropriate proof and assurances of their capacity to make such payments of reasonable attorneys' fees and costs in the event they fail to prevail.

#### **6. Exculpation**

Pursuant to the Plan, on the Effective Date and without the need for further action, the Plan and Confirmation Order shall constitute a release, except of any obligations imposed by the Plan, by: the Debtor, the Estate, the Trust, any Creditor, and any interest holder (collectively, the "Releasing Parties"), on behalf of the Releasing Parties and all their predecessors, successors, parents, direct subsidiaries, indirect subsidiaries, affiliates, assigns, heirs, agents, transferees, directors, officers, employees, and attorneys, of any and all actions, causes of action (including Chapter 5 avoidance actions), claims, suits, debts, damages, judgments, liabilities, and demands whatsoever, whether matured or unmatured, whether at law or in equity, whether before a local, state, or federal court, state or federal administrative agency or commission, regardless of location and whether now known or unknown, liquidated or unliquidated, that the Releasing Parties now have or may have had, or thereafter claim to have, on behalf of themselves, or any other person or entity, as of the Effective Date and only if related to the Chapter 11 Case, against: (i) Munsch Hardt Kopf & Harr, P.C., its attorneys, employees, officers, agents, and shareholders; (ii) Hunton & Williams, LLP, its attorneys, employees, officers, agents, and partners; (iii) each individual, and any entity such individual represented, after the Petition Date based on service as a member of the Committee, and (iv) each individual who served after the



Petition Date as an officer, director, manager, managing member, or partner of the Debtor, from any alleged liability of any of the foregoing for an action or omission taken in the capacity in which he served during the Chapter 11 Case, or with respect to a Claim in the Chapter 11 Case, or with respect to the Plan, except for any such action or omission that constitutes gross negligence, an intentional tort, breach of fiduciary duty (except simple negligence), or the disallowance or disgorgement of any fees or expenses. For the avoidance of doubt, nothing in the Plan releases any such person from any independent claim or cause of action that would not be property of the Estate.

## **7. Injunction**

Upon the Effective Date of the Plan, all Parties are enjoined from (a) threatening, commencing or continuing any lawsuit or other legal or equitable action against the Debtor, the Debtor's property, the Trustee, the Trust or the Trust Assets to recover on any Claim or Interest, (b) committing any act to obtain possession of or exercise control over Trust Assets or property or assets of the Debtor or its Estate, (c) committing any act to create, perfect, or enforce any Lien against Trust Assets or property or assets of the Debtor or the Estate, (d) committing any act to collect, assess, or recover on a Claim that arose prior to the Effective Date and (e) setting off any debt owing to the Debtor that arose prior to the Petition Date against any Claim against the Debtor.

## **F. Modification of the Plan**

In accordance with the Bankruptcy Code, the Proponents reserve the right to amend or modify the Plan at any time prior to the Confirmation Date. After the Effective Date, the Trustee may, upon Order of the Bankruptcy Court, amend or modify the Plan in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.

## **G. Retention of Jurisdiction**

Pursuant to the Plan, from and after the Effective Date of the Plan, the Bankruptcy Court will retain jurisdiction, to the fullest extent legally permitted, over the Chapter 11 Case, all proceedings arising under, arising in or related to the Chapter 11 Case, the Confirmation Order, the Plan and the administration thereof. The specific types of disputes and proceedings that the Bankruptcy Court will retain jurisdiction over are identified in section 13.1 of the Plan.

# **XI.**

## **COMPARISON OF PLAN TO ALTERNATIVES**

### **A. Chapter 7 Liquidation**

The most realistic alternative to the Plan is conversion of the Chapter 11 Case from a proceeding under Chapter 11 of the Bankruptcy Code to a proceeding under Chapter 7 of the Bankruptcy Code. A Chapter 7 case, sometimes referred to as a "straight liquidation," requires the liquidation of all of a debtor's assets by a Chapter 7 trustee. The cash realized from liquidation is subject to distribution to creditors in accordance with section 726 of the Bankruptcy Code. Whether a bankruptcy case is one under Chapter 7 or Chapter 11, allowed



secured claims, allowed administrative claims and allowed priority claims, unless subordinated pursuant to section 510 of the Bankruptcy Code, are entitled to be paid in cash, in full, before unsecured creditors and Interest holders receive anything. Thus, in a Chapter 7 case, the recovery, if any, to creditors holding non-priority unsecured claims will depend upon the net proceeds left in the estate after all of the debtor's assets have been reduced to cash and all claims of higher priority have been satisfied in full.

Chapter 7 liquidation adds an additional layer of expenses. As referenced above, conversion of a bankruptcy case to Chapter 7 will trigger the appointment of a Chapter 7 trustee having the responsibility of liquidating a debtor's assets. Pursuant to sections 326 and 330 of the Bankruptcy Code, the Chapter 7 trustee will be entitled to reasonable compensation in relation to the level of disbursements made to creditors, as follows: (a) up to 25% of the first \$5,000 disbursed; (b) up to 10% of the amount disbursed in excess of \$5,000 but not in excess of \$50,000; (c) up to 5% of any amount disbursed in excess of \$50,000 but not in excess of \$1,000,000; and (d) up to 3% of any amount disbursed in excess of \$1,000,000. Additionally, the Chapter 7 trustee will be entitled to retain his or her own professionals to assist in the liquidation and administration of the estate. The fees and expenses of such professionals, to the extent allowed, are also entitled to priority in payment as Administrative Claims. Chapter 7 administrative costs are entitled to priority in payment over Chapter 11 administrative costs. Nevertheless, Chapter 11 administrative costs continue to have priority over all other non-administrative priority claims and non-priority unsecured claims in the bankruptcy case.

The Proponents are opposed to conversion of the Chapter 11 Case to Chapter 7 for several reasons. First, conversion of the Chapter 11 Case will re-open the Bar Date and enable additional and otherwise time-barred Claims to be asserted. Second, the Proponents believe that conversion of the Chapter 11 Case could lead to additional layers of fees and expenses for the reasons stated in the prior paragraph. Third, conversion to Chapter 7 could result in the appointment of a trustee having no experience or knowledge of the prior proceedings in the Chapter 11 Case or of the Debtor's business, its books and records and its assets. A substantial amount of time would be required in order for the Chapter 7 trustee and the trustee's professionals to become familiar with the Debtor, its business operations, its assets and pending litigation in order to wind the Chapter 11 Case up effectively.

With respect to the "best interest of creditors" test of section 1129(a)(7) of the Bankruptcy Code, the Proponents do not believe that Creditors will achieve a greater recovery under Chapter 7 than under the Plan. Inasmuch as the Plan is a plan of liquidation and most hard assets have already been sold, any comparison of likely distributions to holders of Allowed Claims under the Plan to likely distributions to holders of Allowed Claims in a Chapter 7 proceeding is similar, except that the Proponents contend that the Plan incorporates beneficial compromises which may not be available in a Chapter 7 proceeding, and in a Chapter 7 proceeding the potential for additional administrative expense and additional Claims demonstrates that the distributions under the Plan are likely to exceed, or at least be equal to, the distributions that would be made under Chapter 7 of the Bankruptcy Code.

## **B. Alternative Plans**

To date, no other proposed Chapter 11 plans have been filed in the Chapter 11 Case, and the Proponents do not anticipate that any other Chapter 11 plan will be filed.

### **C. Dismissal**

The most remote alternative possibility is dismissal of the Chapter 11 Case. If dismissal were to occur, the Debtor would no longer have the protection of the automatic stay and other applicable provisions of the Bankruptcy Code. Dismissal would force a race among Creditors to take control and dispose of the Debtor's available assets, and unsecured Creditors, on an aggregate basis, would very likely fail to realize any recovery on their Claims.

## **XII.**

### **MATERIAL UNCERTAINTIES AND RISKS**

In considering whether to vote to accept or reject the Plan, Creditors entitled to vote should consider the following risks associated with the Plan: (a) that all of the conditions to confirmation of the Plan are not satisfied or waived (as applicable); (b) that all of the conditions to the effectiveness of the Plan are not satisfied or waived (as applicable) or that such conditions are delayed by a significant period of time; (c) that estimations and projections may ultimately prove to be materially inaccurate; and (d) that the prosecution of Causes of Action does not result in significant recoveries.

There can also be no assurance that the Plan will not be modified up to and through the Confirmation Date, and the Proponents or Trustee, as appropriate, reserve the right to modify the Plan, subject to compliance with the Bankruptcy Code, in the event the modification becomes warranted or necessary in furtherance of confirmation.

## **XIII.**

### **CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

#### **A. Introduction**

Implementation of the Plan may have federal, state and local tax consequences to the Debtor and its Estate, as well as to Creditors and Interest holders of the Debtor. No tax opinion has been sought or will be obtained with respect to any tax consequences of the Plan, and the following disclosure does not constitute and is not intended to constitute either a tax opinion or tax advice to any Person.

This disclosure is provided for informational purposes only. Moreover, this disclosure summarizes only certain of the federal income tax consequences associated with the Plan's confirmation and implementation and does not attempt to comment on all such aspects. Similarly, this disclosure does not attempt to consider any facts or limitations applicable to any particular Creditor or Interest holder that may modify or alter the consequences described below. This disclosure does not address state, local or foreign tax consequences or the consequences of any federal tax other than the federal income tax.

This disclosure is based upon the provisions of the Internal Revenue Code of 1986, as amended (the "Tax Code"), the regulations promulgated thereunder, existing judicial decisions, and administrative rulings. In light of the expansiveness of such authorities, no assurance can be given that legislative, judicial or administrative changes will not be forthcoming that would affect the accuracy of the discussion below. Any such changes could be material and could be retroactive with respect to the transactions entered into or completed prior to the enactment or

promulgation thereof. Finally, the tax consequences of certain aspects of the Plan are uncertain due to a lack of applicable legal authority and may be subject to judicial or administrative interpretations that differ from the discussion below.

**CREDITORS AND INTEREST HOLDERS, THEREFORE, ARE ADVISED TO CONSULT WITH THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES TO THEM AND TO THE DEBTOR OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES.**

**B. Federal Income Tax Consequences to the Creditors**

In general, a holder of a Claim should recognize gain or loss equal to the amount realized under the Plan in respect to its Claim less the amount of such holder's basis in its Claim. Any gain or loss recognized in the exchange may be long-term or short-term capital gain or loss, or ordinary income or loss, depending upon the nature of the Claim and the holder, the length of time the holder held the Claim and whether the Claim was acquired at a discount. If the holder realizes a capital loss, its deduction of the loss may be subject to limitations under the Tax Code. The holder's aggregate tax basis for any Distribution received under the Plan generally will equal the amount realized. The amount realized by a holder generally will equal the sum of the Distribution the holder received less the amount (if any) allocable to Claims for interest.

**C. Tax Withholding**

The Plan provides for the Trustee to comply with all tax withholding and reporting requirements validly imposed on him by any governmental authority. Accordingly, it provides that Distributions made pursuant thereto shall be subject to such withholding and reporting requirements, and authorizes the Trustee to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including, without limitation, payment of applicable withholding taxes from a Claimant's Distribution, and conditioning a Person's Distributions upon receipt of necessary tax reporting information from a Claimant.

**D. Disclaimers**

**PERSONS CONCERNED WITH THE TAX CONSEQUENCES OF THE PLAN SHOULD CONSULT THEIR OWN ACCOUNTANTS, ATTORNEYS AND/OR ADVISORS. THE PROPONENTS MAKE THE ABOVE-NOTED DISCLOSURE OF POSSIBLE TAX CONSEQUENCES FOR THE SOLE PURPOSE OF ALERTING READERS TO TAX ISSUES THAT THEY MAY WISH TO CONSIDER. THE PROPONENTS CANNOT, AND DO NOT, REPRESENT THAT THE TAX CONSEQUENCES MENTIONED ABOVE ARE COMPLETELY ACCURATE BECAUSE, AMONG OTHER THINGS, THE TAX LAW EMBODIES MANY COMPLICATED RULES THAT MAKE IT DIFFICULT TO STATE ACCURATELY WHAT THE TAX IMPLICATIONS OF ANY ACTION MIGHT BE.**

**IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE INTERNAL REVENUE SERVICE, THE PROPONENTS INFORM ALL RECIPIENTS OF THIS DISCLOSURE STATEMENT THAT ANY U.S. TAX INFORMATION CONTAINED IN THIS DISCLOSURE**

**STATEMENT (INCLUDING THE EXHIBITS HERETO) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (A) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE, OR (B) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED HEREIN.**

**XIV.  
CONCLUSION**

The Proponents believe that the Plan complies with section 1129 of the Bankruptcy Code and is fair and equitable and in the best interests of the Debtor, the Estate and Creditors. Accordingly, the Proponents urge Creditors receiving Ballots to vote to accept the Plan.

DATED: February 6, 2013

**MUNSCH HARDT KOPF & HARR, P.C.**

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