IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	§	
	§	**Chapter 11**
Triangle USA Petroleum Corporation, ***et al.***[1]	§	
	§	**Case No. 16-11566 (MFW)**
	§	
	§	**(Jointly Administered)**
Debtors.	§	
	§	**Re: Docket No. 585**

INITIAL OBJECTION OF NGP RESOURCES X, L.P. AND NGP TRIANGLE HOLDINGS, LLC TO SECOND AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF TRIANGLE USA PETROLEUM CORPORATION AND ITS AFFILIATED DEBTORS

NGP Natural Resources X, L.P. ("NGP") and NGP Triangle Holdings, LLC ("NGP Triangle," and together with NGP, the "NGP Parties") hereby files their initial objection to the *Second Amended Joint Chapter 11 Plan of Reorganization of Triangle USA Petroleum Corporation and its Affiliated Debtors* [Docket No. 585] (the "Plan"), filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"). In support of this Objection, the NGP Parties respectfully represent as follows:

PRELIMINARY STATEMENT[2]

As discussed below, NGP Triangle is undoubtedly the single largest creditor of Triangle Petroleum Corporation ("TPC"), a non-Debtor holding company that owns 100 percent of the equity interests in Debtor Triangle USA Petroleum Corporation ("TUSA"), holding a convertible promissory note with an unpaid principal balance of approximately $149 million.

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Triangle USA Petroleum Corporation (0717); Foxtrot Resources LLC (6690); Leaf Minerals LLC (9522); Ranger Fabrication, LLC (6889); Ranger Fabrication Management, LLC (1015); and Ranger Fabrication Management Holdings, LLC (0750). The address of the Debtors' corporate headquarters is 1200 17th Street, Suite 2500, Denver, Colorado 80202.

[2] Capitalized terms not otherwise defined in the Preliminary Statement have the meanings ascribed to them elsewhere in this Objection.

Additionally, NGP and NGP Natural Resources X Parallel Fund, L.P., an affiliate of the NGP Parties, hold 3,007,623 and 437,742 shares, respectively, in TPC common stock. NGP Triangle is also a creditor of TUSA, having filed a claim in these chapter 11 cases for damages relating to the causes of action asserted in the Chancery Court Litigation.

As a shareholder and the largest creditor of TPC, the NGP Parties have been working closely with the Special Committee of the Board of Directors (the "Special Committee") for TPC to address issues and concerns that are common to both TPC and the NGP Parties regarding the proposed Plan. These issues relate to, among other things, (i) the proposed injunction contained in Section 9.09 of the Plan, (ii) the scope of the releases contained in Sections 9.04 and 9.05 of the Plan, (iii) the proposed cancellation of TPC's shares in TUSA without any distribution to TPC on account of its equity interest and related valuation issues, (iv) the procedures under the Plan relating to the Specified Caliber Contracts (as defined in the Plan) in light of the requirements of section 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and (v) the Debtors' failure to negotiate an acceptable sublease with TPC or otherwise address their intentions with respect to their corporate headquarters space in Denver, Colorado (TPC is the lessee under the underlying lease). These issues remain unresolved as of the filing of this Objection.

The hearing to consider confirmation of the Plan (the "Confirmation Hearing") was originally scheduled for February 14, 2017. The Debtors, however, adjourned the Confirmation Hearing to March 10, 2017, presumably to provide the Debtors with additional time to negotiate with potentially objecting parties. In that regard, the Debtors agreed to provide NGP with an extension of their objection deadline through February 22, 2017 (TPC was granted an extension through February 24, 2017). TPC and the NGP Parties have reached out to the

Debtors in an effort to resolve their concerns with regards to the Plan, but, as of the filing of this Objection, the issues and objections set forth herein remain outstanding. The NGP Parties are continuing to receive and evaluate information relating to the issues identified above. Accordingly, the NGP Parties hereby file this initial Objection to the Plan, but fully reserve their right to amend or supplement the Objection in advance of the Confirmation hearing as additional facts become available. Moreover, the NGP Parties hereby reserve the right to join in any Plan-related objections filed by TPC (or the Special Committee) or Caliber Midstream Partners, L.P. and its related entities (collectively, "Caliber").

BACKGROUND

1. TPC is a non-Debtor holding company that owns 100 percent of the equity interests in TUSA, one of the Debtors in these chapter 11 cases. TPC's assets also include an ownership interest in Debtor Ranger Fabrication, LLC and an indirect minority interest in Caliber. TPC's CEO and board member, Jonathan Samuels, also serves as the CEO and board member of Debtor TUSA. Additionally, the Chairman of TPC's Board, Peter Hill, is a former employee of TUSA. The NGP Parties submit that the overlapping management and common directors created intercompany conflicts which led to a series of fraudulent transfers and interested transactions which inured to the benefit of TUSA and significantly harmed TPC and its stakeholders. The NGP Parties have filed the Chancery Court Litigation (as defined herein) in this regard and are continuing to investigate other potential causes of action.

2. NGP Triangle holds a 5.0% convertible promissory note of TPC, with an unpaid principal balance of approximately $149 million. As such, NGP Triangle is undoubtedly the single largest creditor of TPC. NGP is the record and/or beneficial owner of 3,007,623

shares of common stock of TPC. In addition, NGP Natural Resources X Parallel Fund, L.P., an affiliate of the NGP Parties, owns 437,742 shares of common stock of TPC.

3. On July 20, 2016, the NGP Parties commenced litigation by filing a Verified Complaint against TPC and certain of its top executives, Jonathan Samuels, Dominic Spencer, Douglas Griggs and Ryan McGee (collectively, the "Officer Defendants"), in the Court of Chancery of the State of Delaware (Civil Action No. 12574-CB) (the "Chancery Court Litigation"). Pursuant to the Chancery Court Litigation, the NGP Parties challenge as fraudulent transfers certain "Special Compensation Arrangements" made by TPC to the Officer Defendants and designed to compensate the Officer Defendants for services performed on behalf of TUSA (at a time when TPC was insolvent).

4. Based upon information and belief, TPC has made additional payments to or on behalf of TUSA and its employees at a time that TPC was insolvent. The transfers were principally for the benefit of TUSA and TPC did not receive any benefit for the payments made to or on behalf of TUSA. As a creditor of TPC at the time that the transfers were made to TUSA or on TUSA's behalf, the subject transfers were fraudulent as to NGP Triangle and may be voided under 6 Del. C. §§ 1304 and 1305 or other applicable law. The conflicts between TUSA and TPC that are the subject of the Chancery Court Litigation are to the NGP Parties' knowledge and belief symptomatic of conflicts that have been in existence since before the appointment of the Special Committee. The NGP Parties are evaluating the potential for bringing additional claims and litigation against TPC and its board as additional facts become known, including, but not limited to, claims for breach of the fiduciary duty of loyalty.

5. NGP Triangle timely filed an unliquidated claim for damages against TUSA in these chapter 11 cases relating to the fraudulent transfers made by TPC to or on behalf

of TUSA. NGP Triangle timely submitted a Class 4 ballot with regards to such claim, voting to reject the Plan and opting out of the proposed third party releases contained therein.

OBJECTION OF THE NGP PARTIES

A. The Proposed Tax Injunction Set Forth in Section 9.09 of the Plan is Vague and Overly Broad.

6. Pursuant to Section 9.09 of the Plan, the Debtors are seeking the imposition of an injunction (the "Tax Injunction") that would prevent "fifty percent shareholders" of TUSA from taking any action that may adversely affect its tax attributes. As the sole shareholder of TUSA, TPC would be enjoined under the Tax Injunction from:

> (a) claiming a worthless stock deduction with respect to any Old TUSA Common Stock held by such person(s) (or otherwise treating such Old TUSA Common Stock as worthless for U.S. federal income tax purposes) for any taxable year of such person(s) ending prior to the Effective Date, (b) making an election pursuant to Treasury Regulations section 1.1502-36(d)(6), or (c) taking any other action that would reduce, limit, or otherwise adversely affect the U.S. federal income tax attributes of TUSA.

Plan, § 9.09.

7. The NGP Parties take no issue with prong (a) or (b) of the proposed Tax Injunction. Prong (a) seeks to prohibit TPC from claiming a worthless stock deduction with respect to the Old TUSA Common Stock[3] for any taxable year ending prior to the Effective Date. As the Old TUSA Common Stock will be cancelled as of the Effective Date under the Plan, the temporal prohibition contained in prong (a) is not problematic for TPC. The NGP Parties also do not object to the election prohibited by prong (b) of the Tax Injunction.

8. It is entirely unclear, however, as to what is intended by prong (c) of the proposed Tax Injunction. Prong (c) seeks to enjoin TPC from taking "any other action that would reduce, limit, or otherwise adversely affect" TUSA's tax attributes. This vague and

[3] Capitalized terms not otherwise defined herein have the meanings given to them in the Plan.

overly broad provision provides no guidance as to what acts are actually prohibited. See Trump Plaza Owners, Inc. v. Weitzner, 849 N.Y.S.2d 554, 555 (N.Y. App. Div. 2008) (remanding to Supreme Court with direction to "specifically set forth in the injunction the proscribed conduct"); Xerox Corp. v. Neises, 295 N.Y.S.2d 717, 720 (N.Y. App. Div. 1968) ("[A] decree granting injunctive relief, whether temporary or permanent, must define specifically what the enjoined person must or must not do, in language so clear and explicit that a layman can understand what he is expected to do, or refrain from doing, without placing the one enjoined in the position of acting at his peril.") (internal citations omitted).[4] Indeed, the practical effect of this type of provision is that before taking any action that could potentially impact TUSA's tax position, including filing any tax return, TPC will need to seek a declaratory judgment from this Court that nothing contemplated or contained therein would violate prong (c) of the Tax Injunction. This would not be a prudent use of this Court's scarce judicial resources and would also be highly prejudicial to TPC. Rather, the Debtors should be required to unambiguously identify in the Plan the specific acts to which it seeks to enjoin so that TPC (i) can fully assess the potential effect of the Tax Injunction and object at the Confirmation Hearing, if necessary, and (ii) comply with its state and Federal tax obligations and conduct its business in the ordinary course moving forward without fear that it will be in contempt of the Tax Injunction.

9. One specific concern of the NGP Parties' with regards to prong (c) is that the Debtors are seeking to use it as a "catch-all" to permanently enjoin TPC from ever taking a worthless stock deduction with regards to the Old TUSA Common Stock. The NGP Parties submit that this would be wholly inappropriate given the specific language of prong (a) and the time period referenced therein. Such a reading of the Tax Injunction would be inconsistent with

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[4] Section 12.10 of the Plan provides that the laws of the State of New York shall govern the construction and implementation of the Plan.

the basic cannons of contract interpretation. See Muzak Corp. v. Hotel Taft Corp., 133 N.E.2d 688, 690 (N.Y. 1956) (noting that under New York rules of construction, specific provisions prevail over general provisions if there is an inconsistency between the two); see also TBA Global, LLC v. Fidus Partners, LLC, 15 N.Y.S.3d 769 (N.Y. App. Div. 2015) (following the "longstanding rule that, where there is an inconsistency between a specific provision and a general provision of a contract…, the specific provision controls.") (citations omitted); W2001Z/15 CPW Realty, LLC v. Lexington Ins. Co., 9 N.Y.S.3d 18, 19 (N.Y. App. Div. 2015) (noting that a faulty workmanship exclusion in a contract was more specific than a protection of property provision and concluding that the more specific provision applied). Given that prong (a) is narrowly tailored to apply only to tax years ending prior to the Effective Date, prong (c) should not be read to expand the reach of prong (a) to subsequent tax years. While the NGP Parties submit that this is the only equitable reading of the Tax Injunction, they request that the Court clarify the scope of this provision at the Confirmation Hearing to avoid uncertainty in future tax years.

10. Moreover, to the extent that prong (c) is intended to enjoin TPC from claiming a worthless stock deduction in future years, the NGP Parties request that this language be stricken in its entirety. As an initial matter, the NGP Parties submit that permanently enjoining a party from claiming a worthless stock deduction is inconsistent with the application of applicable tax law. Indeed, through application of the Federal tax code and related regulations, TUSA's tax attributes will be diminished regardless of whether TPC takes any affirmative steps to claim the worthless stock deduction. Treas. Reg. § 502-36(f)(10)(D).[5]

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[5] Certain loss disallowance rules under Treasury Regulations result in attribute reduction of TUSA and, in this case, will operate to eliminate the NOLs of TUSA. These rules apply when a parent "transfers" stock in its subsidiary at a loss. In the case of stock that becomes worthless, a "transfer" is deemed to occur on"[t]he last day of the taxable year during which the share becomes worthless." Treas. Reg. § 1.1502-36(f)(10)(D). The TUSA stock

Moreover, the Debtors will be unable to show that a permanent injunction is necessary to the preservation of estate assets and its efforts to reorganize. In fact, the Debtors' projections show (and they confirmed as much on the record at the January 13, 2017 hearing) that the Reorganized Debtors do not anticipate the realization of any taxable income for the next 5 years (without assuming the availability of any NOLs to offset income). More importantly, even in the absence of TPC claiming a worthless stock deduction, the NGP Parties estimate that there will not be any NOLs available to TUSA as the result of certain attribute reduction and loss disallowance rules. Accordingly, a permanent injunction, while extremely detrimental to TPC, would provide no benefit to a Reorganized TUSA and is therefore unnecessary to the implementation of the Plan.[6]

B. The NGP Parties Object to the Proposed Releases Contained in Sections 9.04 and 9.05 of the Plan.

11. As discussed above, the NGP Parties believe that the overlapping management and common directors between TPC and TUSA have led to a series of fraudulent transfers and interested transactions which have significantly harmed TPC and its stakeholders. In that regard, the NGP Parties object to the Plan to the extent that it purports to release persons or entities, including TUSA's employees, officers and directors from any claims or causes of action that may be asserted by TPC or the NGP Parties.

12. There are two sections in the Plan governing releases: (i) Section 9.04, which is intended to provide for releases by the Debtors (but is actually drafted broadly enough

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held by TPC clearly becomes worthless when it is cancelled on the effective date of the Plan. Accordingly, it is the worthlessness of the TUSA stock held by TPC pursuant to the Plan, and not the claiming of a deduction by TPC, that triggers the loss disallowance rules that will diminish TUSA's tax attributes. Treas. Reg. § 1.1502-36(a)(1).

[6] The NGP Parties are aware of the Second Circuit's decision in In re Prudential Lines Inc., 928 F.2d 565 (2nd Cir. 1991) and its progeny. Prudential Lines, however, was an automatic stay case relating to a debtor's ability to prevent its non-debtor parent from claiming a worthless stock deduction for a tax year preceding the effective date of its plan (essentially what prong (a) of the Tax Injunction provides). The NGP Parties, on the other hand, are objecting to any attempt to permanently enjoin TPC from claiming a worthless tax deduction for tax years ending after the Effective Date. Moreover, contrary to Prudential Lines, where a non-debtor parent was enjoined from an action that would arguably impede the reorganization process of the debtor, here, under applicable U.S. federal income tax law, all of TUSA's tax attributes will be reduced irrespective of TPC's actions.

to encompass TPC); and (ii) Section 9.05, which provides for releases by the Holders of Claims and Interests. With regards to the Section 9.05 releases, the ballots solicited in connection with the Plan afforded claimants with the ability to opt out of the third party releases. The NGP Parties have timely submitted a Class 4 ballot rejecting the plan and opting out of the releases and understand that TPC has done the same. The NGP Parties do, however, seek clarification with respect to one aspect of Section 9.05. Specifically, Section 9.05 provides for releases by the "Releasing Parties." The term "Releasing Parties" is defined in Section 1.131 of the Plan as follows:

> **"Releasing Parties"** means each of the following in their respective capacities as such: (a) the Released Parties, (b) each Holder of a Claim voting to accept the Plan, unless such Holder checks the box on the ballot and returns such ballot in accordance with the Disclosure Statement Order to opt out of the third party releases contained in Section 9.05 hereof, (c) each Holder of a Claim voting to reject the Plan, unless such Holder checks the box on the ballot and returns such ballot in accordance with the Disclosure Statement Order to opt out of the third party releases contained in Section 9.05 hereof, and (d) each such Holder's current and former officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals.

Accordingly, notwithstanding the NGP Parties and TPC having rejected the Plan and opted out of the releases, prong (d) would seemingly still provide for releases by their respective current and former officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals (collectively, the "Holder Parties"). Surely this cannot be the intent of Section 9.05 of the Plan. Thus, the NGP Parties submit that prong (d) of the definition of "Releasing Parties" should be amended to make clear that the Holder Parties shall not be subject to the Section 9.05 releases where the underlying Holder has opted out of the releases on their respective ballot.

13. Section 9.04 of the Plan, on the other hand, provides, in relevant part, that "as of the Effective Date, the Debtors and their Estates, the Reorganized Debtors, and each of their respective current and former Affiliates shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released, waived and discharged the Released Parties . . . ." (emphasis added). The term "Affiliates" is defined in section 101(2) of the Bankruptcy Code to include an "entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor . . . ." This would include TPC as the sole shareholder of TUSA. The term "Released Parties" is defined in Section 1.130 of the Plan to include, among other parties, the Debtors and their employees, officers and directors. Accordingly, notwithstanding TPC's efforts to opt out of the Section 9.05 releases, Section 9.04 includes a non-consensual third-party release by TPC in favor of numerous persons and entities, including TUSA's employees, officers and directors. This type of non-consensual release is simply impermissible under applicable law and should not be approved. See In re Wash. Mut., Inc., 442 B.R. 314, 352 (Bankr. D. Del. 2011); In re Coram Healthcare Corp., 315 B.R. 321 at 335-36 (Bankr. D. Del. 2004) ("[T]o the extent the . . . Plan seeks approval of a release by third parties of claims . . . they may have against [other non-debtors] (other than derivative claims which the Trustee has waived), it cannot be approved."); In re Indianapolis Downs, LLC, 486 B.R. 286, 305 (Bankr. D. Del. 2013) ("Courts in this jurisdiction have consistently held that a plan may provide for a release of third party claims against a non-debtor upon consent of the party affected."); In re Spansion, Inc., 426 B.R. 114, 144 (Bankr. D. Del. 2010) ("Courts have determined that a third party release may be included in a plan if the release is consensual and binds only those creditors voting in favor of the plan.").

14. The inappropriateness of including TPC as a releasing party under Section 9.04 is highlighted by the fact that the releases being provided by the Debtors to their employees, officers and directors thereunder do not even pass muster under applicable case law. This Court has held that a plan may provide for a release by a debtor of non-debtor third parties under "certain limited circumstances" after the consideration of a five factor test. In re Zenith Elecs. Corp., 241 B.R. 92, 110 (Bankr. D. Del. 1999) (citing In re Master Mortg. Inv. Fund, 168 B.R. 930, 937 (Bankr. W.D. Mo. 1994)). The five factors to be considered under Zenith and Master Mortgage are as follows:

> (1) an identity of interest between the debtor and the third party, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete assets of the estate;
>
> (2) substantial contribution by the non-debtor of assets to the reorganization;
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> (3) the essential nature of the injunction to the reorganization to the extent that, without the injunction, there is little likelihood of success;
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> (4) an agreement by a substantial majority of creditors to support the injunction, specifically if the impacted class or classes "overwhelmingly" votes to accept the plan; and
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> (5) provision in the plan for payment of all or substantially all of the claims of the class or classes affected by the injunction.

Zenith Elecs. Corp., 241 B.R. at 110 (citing Master Mortg., 168 B.R. at 937 (Bankr. W.D. Mo. 1994)). The NGP Parties submit that the Master Mortgage factors cannot be satisfied with respect to TUSA's employees, officers and directors.

15. First, there is no identify of interest between the Debtors and such parties. The Debtors may argue that there is an identity of interest that exists between them and the directors and officers who served prepetition because such parties may be entitled to indemnification from the Debtors. Indemnification alone, however, does not justify the proposed

releases. See In re Wash. Mut., Inc., 442 B.R. 297 at 349 (Bankr. Del. 2011); see also In re Cont'l Airlines, 203 F.3d 203, 216 (3d Cir. 2000) ("Even if the D&O defendants' obligations . . . were indemnifiable, the fact that the reorganized [debtors] might face an indemnity claim sometime in the future, in some unspecified amount, does not make the release . . . 'necessary' to ensure the success of the [debtors] reorganization."). Second, the Debtors have not provided any evidence that such parties provided a substantial contribution to the Plan to warrant such a release. There is also no merit to any argument that the releases are necessary to a successful reorganization, as the Plan does not hinge upon granting TUSA's employees, officers and directors the releases.

C. The Plan Improperly Cancels TPC's Shares in TUSA Without Providing Any Distribution to TPC on Account of Its Equity Interests.

16. Pursuant to the Plan, the Debtors seek to cancel TPC's shares in TUSA without any distribution to TPC on account of its 100 percent equity interest. This proposed treatment of TPC's equity interest potentially violates the absolute priority rule by overpaying senior creditors at the expense of equity holders in these cases. See Confirmation Hr'g Tr. at 3, In re Boomerang Tube, LLC, Case No. 15-11247 (MFW) (Bankr. Del. Nov. 9, 2015) ("It is corollary of the absolute priority rule that creditors in the senior class cannot get more than payment in full of their claims") (citing In re Genesis Health Ventures Inc., 266 B.R. 591 (Bankr. D. Del. 2001); and In re Johns Manville Corp., 68 B.R. 618, 623 (Bankr. S.D.N.Y. 1986)). This treatment is also at odds with improving market trends and other recent restructurings in the oil and gas sector in this District that have provided plan consideration to existing equity holders. Based on a review of the projections for a Reorganized TUSA, the NGP Parties believe that unsecured creditors would receive a full recovery under the Plan in the event that oil prices were to increase to levels above $70 per barrel. Accordingly, the Plan should provide some

mechanism for a potential return to equity in the event that unsecured creditors have been paid in full (the Special Committee has previously suggested the concept of granting a warrant to TPC with a strike price guarantying full repayment of creditors before TPC could exercise such warrant).

D. The Procedures Under the Plan Relating to the Specified Caliber Contracts Violate Section 365 of the Bankruptcy Code.

17. In light of the proposed treatment of its equity interests in TUSA under the Plan, TPC's indirect minority interest in Caliber is one of its most valuable assets. As such, TPC (and the NGP Parties given their interests at TPC) has an economic interest in how the Specified Caliber Contracts are treated under the Plan. In that regard, the NGP Parties submit that Section 6.03(b) of the Plan does not comport with the requirements of the Bankruptcy Code and is therefore not confirmable on that basis.

18. Section 1123(b)(2) of the Bankruptcy Code provides that a chapter 11 plan "may . . . subject to section 365 . . . provide for the assumption, rejection, or assignment of any executory contract." 11 U.S.C. § 1123(b)(2). Section 365(d)(2) of the Bankruptcy Code, in turn, provides that a debtor "may assume or reject an executory contract or unexpired lease of residential real property of the debtor any time before the confirmation of a plan . . . ." 11 U.S.C. § 365(d)(2). With regards to the Specified Caliber Contracts, however, the Debtors have ignored the temporal limitation contained in section 365(d)(2) and instead propose a conditional rejection or, under certain circumstances, a conditional assumption of the midstream contracts dependent upon the future outcome of litigation currently pending in North Dakota and this Court's determination as to the magnitude of potential damage claims resulting from a rejection. Specifically, Section 6.03(b) of the Plan provides that the Specified Caliber Contracts shall be "deemed automatically rejected *as of the Effective Date*" upon (i) the entry of a final order in the

Caliber Declaratory Judgement Action determining that the Specified Caliber Contracts do not constitute or contain a covenant running with the land; and (ii) the entry of a final order or judgment by this Court fixing any rejection damage claims flowing from the rejection of the Specified Caliber Contracts at less than $75 million. In the event that these conditions are not met, the Specified Caliber Contracts shall automatically be deemed assumed.

19. While the Debtors are attempting to hedge all bets, they clearly are not complying with the spirit of section 365(d)(2). There is no certainty as to when the North Dakota court will decide the Caliber Declaratory Judgment Action and it may be months or years following the proposed Effective Date. Accordingly, the Debtors have not made a definitive decision to assume or reject the Specified Caliber Contracts as of the confirmation date of the Plan. Rather, they have created these condition laden scenarios which effectively render Caliber unable to protect its interests in these cases. For example, Caliber is entitled to know whether the Specified Caliber Contracts will be rejected in advance of the Confirmation Hearing so that it may then vote in the full amount of their rejection damages claim (rather than some arbitrary cap established by the Debtors) and have the opportunity to fully participate in the rights offering. Accordingly, the Debtors should be required to assume or reject the Specified Caliber Contracts pursuant to the Plan independent of any future contingencies. Alternatively, the Debtors should delay confirmation of their Plan until such time as they can make a definitive decision as to the treatment of the Caliber midstream contracts.

E. The Plan Fails to Address the Debtors' Intentions with Respect to the Occupancy of Their Headquarters Space After the Effective Date.

20. The Debtors' corporate headquarters are currently listed as 1200 17th Street, Suite 2500, Denver, Colorado 80202 (the "Headquarters Premises"). The lessee with regards to the Headquarters Premises, however, is TPC -- not TUSA. In fact, the NGP Parties

are not aware of any existing lease or sublease arrangement relating to TUSA's occupancy of the Headquarters Premises. There is a Management Agreement, dated April 11, 2013 (the "Management Agreement") in effect between TUSA and TPC relating to the provision of management, operating and administrative services historically performed by TPC, but the Management Agreement does not address TUSA's occupancy of the Headquarters Premises. Likewise, the Plan fails to address the Debtors' intentions with respect to the Headquarters Premises following the Effective Date. Accordingly, in the absence of a suitable sublease arrangement, the NGP Parties submit that the Debtors are nothing more than squatters and that TPC will have the ability to pursue any available eviction remedies under Colorado law.

RESERVATION OF RIGHTS AND JOINDER IN OTHER OBJECTIONS

21. As the NGP Parties are continuing to receive and evaluate information relating to their potential objections, they fully reserve the right to amend or supplement this initial Objection in advance of the Confirmation Hearing. The NGP Parties also reserve the right to join in any Plan-related objections filed by TPC (or the Special Committee on behalf of TPC) or Caliber.

Dated: February 22, 2017
Wilmington, Delaware

/s/ Michael J. Merchant

Mark D. Collins (No. 2981)
Daniel J. DeFranceschi (No. 2732)
Michael J. Merchant (No. 3854)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701
collins@RLF.com
merchant@RLF.com

Attorneys for the NGP Parties