

U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS  
ON THE COURTS DOCKET  
TAWANA C. MARSHALL, CLERK

**DEC 10 2009**



**D. Michael Lynn**  
**U.S. Bankruptcy Judge**

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

**In re**

**PILGRIM'S PRIDE CORPORATION, *et al.*,**

**Debtors.**

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**Chapter 11**

**Case No. 08-45664 (DML)**

**JOINTLY ADMINISTERED**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
CONFIRMING DEBTORS' AMENDED JOINT PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE (AS MODIFIED)**

(Relates to Docket Nos. 3375, 3828, 4033, and 4035)

The Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the  
Bankruptcy Code (As Modified) (as may be further modified, the "Plan") having been filed with



the Bankruptcy Court<sup>1</sup> by Pilgrim's Pride Corporation ("PPC") and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors"),<sup>2</sup> on November 17, 2009 [Docket No. 4035]; and the supplement to the Plan and an amendment thereto (as the documents contained therein may be further amended or supplemented, the "Plan Supplement") having been filed with the Bankruptcy Court by the Debtors on November 20, 2009 and December 4, 2009, respectively; and the Bankruptcy Court having entered, after due notice and a hearing, an order [Docket No. 3828] (the "Disclosure Statement Order"), dated October 22, 2009, (i) approving the proposed disclosure statement (the "Disclosure Statement"); (ii) approving the procedures to solicit acceptances of the Debtors' proposed Plan, and (iii) scheduling a hearing and establishing notice and objection procedures for confirmation of the Debtors' proposed Plan (the "Confirmation Hearing"); and the Disclosure Statement and Plan having been distributed or made available to holders of Claims against and Equity Interests in the Debtors and other parties in interest as provided in the Disclosure Statement Order; and the Bankruptcy Court having entered, after due notice and a hearing, an order [Docket No. 4033] (the "Election Procedures Order"), dated November 17, 2009, approving certain election procedures (the "Election Procedures") with respect to confirmation of the Plan; and the hearing to consider confirmation of the Plan having been held before the Bankruptcy Court on December 8, 2009 (the "Confirmation Hearing"); and due notice of the Plan, the Confirmation Hearing and the Election Procedures having been provided to holders of Claims against and Equity Interests in the Debtors and other parties in interest in accordance

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Plan.

<sup>2</sup> The Debtors in these cases are PPC; PFS Distribution Company, PPC Transportation Company; To-Ricos, Ltd.; To-Ricos Distribution, Ltd.; Pilgrim's Pride Corporation of West Virginia, Inc.; and PPC Marketing, Ltd.

with the Disclosure Statement Order, the Election Procedures Order, title 11 of the United States Code (the “Bankruptcy Code”), and the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), as established by the affidavits of service, mailing, and/or publication filed with the Bankruptcy Court (the “Notice Affidavits”),<sup>3</sup> and such notice being sufficient under the circumstances and no further notice being required; and after full consideration of (i) the Debtors’ memorandum of law in support of confirmation of the Plan, dated December 4, 2009 [Docket No. 4318] (the “Confirmation Memorandum of Law”), (ii) the declarations in support of confirmation of the Plan, each filed December 4, 2009 by Richard A. Cogdill [Docket No. 4329] (the “Cogdill Declaration”), Daniel M. Aronson [Docket No. 4322] (the “Aronson Declaration”), and William K. Snyder [Docket No. 4330] (the “Snyder Declaration”); (iii) the declaration filed by the Debtors’ Court-appointed voting and solicitation agent, Kurtzman Carson Consultants LLC (“KCC”), dated December 4, 2009, regarding the methodology applied to the tabulation of the voting results with respect to Plan [Docket No. 4324] (the “KCC Declaration”), (vi) each of the objections to confirmation of the Plan (the “Objections”); and (vii) the Debtors’ omnibus response to the Objections filed December 4, 2009 [Docket No. 4321]; and all Objections having been withdrawn, resolved, or otherwise overruled or addressed as set forth herein or by separate further order of the Bankruptcy Court; and upon all of the proceedings had before the Bankruptcy Court and upon the arguments of counsel and all of the evidence adduced at the Confirmation Hearing; and the Bankruptcy Court having determined based upon all of the foregoing that the Plan should be confirmed, as reflected by the Bankruptcy Court’s rulings

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<sup>3</sup> The Notice Affidavits have been filed at Docket Nos. 3472, 3649, 3650, 3667, 3784, 3786, 3806, 3873, 3875, 3878, 4065, 4076, 4126, 4127, 4128, 4149, 4151, 4153, 4154, 4217, 4218, 4258 and 4293.

made herein and at the Confirmation Hearing; and after due deliberation and sufficient cause appearing therefor, the Bankruptcy Court hereby

FINDS, DETERMINES, AND CONCLUDES THAT:

A. Findings and Conclusions. The findings and conclusions set forth herein and in the record of the Confirmation Hearing constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

#### **Jurisdiction and Venue**

B. Exclusive Jurisdiction, Venue, Core Proceeding (28 U.S.C. §§ 157(b)(2), 1334(a)). The Bankruptcy Court has jurisdiction over the Debtors' chapter 11 cases pursuant to 28 U.S.C. § 1334. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Bankruptcy Court has jurisdiction to enter a final order with respect thereto. The Debtors are eligible debtors under section 109 of the Bankruptcy Code. Venue is proper before the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **Chapter 11 Cases**

C. Commencement of the Chapter 11 Cases. On December 1, 2008 (the "Commencement Date"), the Debtors commenced with the Bankruptcy Court voluntary cases under chapter 11 of the Bankruptcy Code. By order of the Bankruptcy Court, dated December 3, 2008, the Chapter 11 Cases were consolidated for procedural purposes only and are being jointly administered. The Debtors have been operating their businesses and managed their properties as

debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee has been appointed in these Chapter 11 Cases.

D. Judicial Notice. The Bankruptcy Court takes judicial notice of (i) as appropriate, Proofs of Claims filed in the Debtors' Chapter 11 Cases, and (ii) the docket of the Debtors' Chapter 11 Cases maintained by the Clerk of the Bankruptcy Court and pleadings reflected therein, including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at the hearings held before the Bankruptcy Court during the pendency of the Chapter 11 Cases.

#### **Solicitation and Notice**

E. Solicitation and Notice. On October 22, 2009, the Bankruptcy Court entered the Disclosure Statement Order, which, among other things, approved the Disclosure Statement, finding that it contained "adequate information" within the meaning of section 1125 of the Bankruptcy Code, and established procedures for the Debtors' solicitation of votes on the Plan. On November 17, 2009, the Bankruptcy Court entered the Election Procedures Order, which, among other things, approved procedures for holders of Allowed Note Claims to make the Cash-Out Election under the Plan. The Disclosure Statement, the Plan, the Ballots (as defined in the Disclosure Statement Order), the notice of the Confirmation Hearing, the notice of Cash-Out Election, and the Disclosure Statement Order (collectively, the "Solicitation Materials") were served in compliance with the Bankruptcy Rules, the Disclosure Statement Order and the Election Procedures Order, as applicable. As described in the KCC Declaration and the Notice Affidavits (i) the service of the Solicitation Materials was adequate and sufficient under the circumstances of these Chapter 11 Cases and (ii) adequate and sufficient notice of the Confirmation Hearing and other requirements, deadlines, hearings, and matters described in the

Disclosure Statement Order and the Election Procedures Order was timely provided in compliance with the Bankruptcy Rules, the Disclosure Statement Order and the Election Procedures Order.

F. Voting. Votes on the Plan were solicited after disclosure to holders of Claims against and Equity Interests in the Debtors of “adequate information” as defined in section 1125 of the Bankruptcy Code. As evidenced by the KCC Declaration, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules for the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”).

G. Plan Supplement. On November 20, 2009, the Debtors filed the Plan Supplement, which includes the following documents: (i) summary of terms of the Exit Facility and a copy of the Credit Agreement, (ii) Schedules 8.1, 8.7 and 8.9 of the Plan, (iii) list of initial directors for the Reorganized Debtors, (iv) list of initial officers of Reorganized Debtors, (v) Amendment No. 1 to the Plan Sponsor’s Form S-1 filed with the Securities and Exchange Commission on November 2, 2009, and (vi) JBS SA’s most recent financial statements. On December 4, 2009 and December 8, 2009, the Debtors filed certain amendments to the Plan Supplement. All such materials comply with the terms of the Plan, and the filing and notice of such documents was good and proper and in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and no other or further notice is or shall be required.

**Compliance with the Requirements of Section 1129 of the Bankruptcy Code**

H. Burden of Proof. The Debtors, as proponents of the Plan, have met their burden of proving the elements of sections 1129 of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard.

I. Bankruptcy Rule 3016(a). The Plan is dated and identifies the Debtors as the Plan proponents, thereby satisfying Bankruptcy Rule 3016(a).

J. Plan Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

i. Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)). As required by section 1123(a)(1), in addition to Administrative Expense Claims, Priority Tax Claims, and DIP Claims, which need not be classified, Article III of the Plan designates fifty (50) Classes (inclusive of sub-Classes) of Claims against and Equity Interests in the Debtors. As required by section 1122(a) of the Bankruptcy Code, the Claims (to the extent treated as a Class) and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not effect unfair discrimination between holders of Claims and Equity Interests. Thus, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

ii. Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Articles III and IV of the Plan specify that Classes 1(a)-(g), Classes 2(a)-(c), Class 3, Classes 4(a)-(g), Classes 5(a)-(g), Classes 6(a)-(c), Classes 7(a)-(g), Class 8, Classes 9(a)-(g) and Classes 10(b)-(g) are unimpaired under the Plan, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

iii. Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).

Articles III and IV of the Plan designate Class 10(a) is impaired and Article IV of the Plan sets forth the treatment of such impaired Class, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

iv. No Discrimination (11 U.S.C. § 1123(a)(4)). Article IV of the Plan provides for the same treatment by the Debtors for each Claim or Equity Interest in each respective Class unless the holder of a particular Claim or Equity Interest has agreed to a less favorable treatment in respect of such Claim or Equity Interest, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

v. Implementation of the Plan (11 U.S.C. § 1123(a)(5)). The Plan and the various documents set forth in the Plan Supplement provide for adequate and proper means for implementation of the Plan, including, without limitation, (a) the continued corporate existence of the Debtors, (b) the corporate constituent documents that will govern the Reorganized Debtors after the Effective Date, including, without limitation, the Restated Certificates of Incorporation and the Restated By-Laws, (c) the entry into, and incurrence of new indebtedness under, the Exit Facility Documents, (d) consummation of the transactions contemplated by the SPA Documents (as defined below), (e) cancellation of Equity Interests in PPC, (f) the issuance of New PPC Common Stock, (g) the cancellation of certain existing agreements, obligations, instruments, and interests, (h) the continued vesting of the assets of the Debtors' estates in the Reorganized Debtors, (i) the adoption of the New Employee Incentive Plans, and (j) the execution, delivery, filing, or recording of all contracts, instruments, releases, and other agreements or documents related to the foregoing, thereby satisfying section 1123(a)(5) of the Bankruptcy Code.



vi. Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)). Section 9.5 of the Plan and the Reorganized Debtor Constituent Documents of Reorganized PPC prohibit the issuance of nonvoting equity securities to the extent prohibited by section 1123(a)(6) of the Bankruptcy Code and provide for an appropriate distribution of power among voting classes, thereby satisfying section 1123(a)(6) of the Bankruptcy Code. Section 1123(a)(6) does not apply to the other Reorganized Debtors because such entities are not issuing securities under the Plan.

vii. Designation of Directors and Officers (11 U.S.C. § 1123(a)(7)). The Reorganized Debtors' initial directors and officers are set forth in the Plan Supplement and the Reorganized Debtor Constituent Documents for each Reorganized Debtor set out the procedures for selection of subsequent directors and officers of each Reorganized Debtor. Such procedures are consistent with the interests of creditors and equity holders and public policy, thereby satisfying section 1123(a)(7) of the Bankruptcy Code.

K. Additional Plan Provisions (11 U.S.C. § 1123(b)). The additional provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b) of the Bankruptcy Code.

i. Impairment/Unimpairment of Any Class of Claims or Interests (§ 1123(b)(1)). Pursuant to the Plan, Classes 1(a)-(g), Classes 2(a)-(c), Class 3, Classes 4(a)-(g), Classes 5(a)-(g), Classes 6(a)-(c), Classes 7(a)-(g), Class 8, Classes 9(a)-(g) and Classes 10(b)-(g) are unimpaired and Class 10(a) is impaired, as contemplated by section 1123(b)(1) of the Bankruptcy Code.

ii. Assumption and Rejection of Executory Contracts (11 U.S.C. § 1123(b)(2)). Article VIII of the Plan provides for the rejection of the executory contracts and

unexpired leases of the Debtors as of the Effective Date, except for any executory contract or unexpired lease (a) that has been assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court entered on or before the Effective Date, (b) as to which a motion for approval of the assumption, assumption and assignment, or rejection has been filed and served prior to the Confirmation Date, (c) that is specifically designated as a contract or lease to be assumed or assumed and assigned on Schedule 8.1 of the Plan, which Schedule is contained in the Plan Supplement, or (d) that is designated as assumed pursuant to sections 8.6 through 8.9 of the Plan.

iii. Other Appropriate Provisions (11 U.S.C. § 1123(b)(2)). The Plan's other provisions are appropriate and consistent with the applicable provisions of the Bankruptcy Code, including, without limitation, provisions for (a) distributions to holders of Claims and Equity Interests, (b) approval of and authorization to enter into the SPA Documents, to the extent not already approved by the Bankruptcy Court on October 7, 2009 [Docket No. 3620], (c) approval of and authorization to enter into the Exit Facility Documents, (d) retention of, and right to enforce, sue on, settle, or compromise (or refuse to do any of the foregoing with respect to) certain claims and causes of action against third parties, to the extent not waived and released under the Plan, (e) resolution of Disputed Claims, (f) allowance of certain Claims; (g) indemnification obligations, (h) releases by Debtors of certain parties; (i) releases by holders of Claims and Equity Interests; and (j) exculpations of certain parties.

L. Cure of Defaults (11 U.S.C. § 1123(d)). Section 8.4 of the Plan provides for the satisfaction of default claims associated with each executory contract and unexpired lease to be assumed pursuant to the Plan in accordance with section 365(b)(1) of the Bankruptcy Code. The cure amounts identified in Schedule 8.1 of the Plan and the Assumption Notices and

Supplemental Assumption Notices, as applicable, represent the amount, if any, that the Debtors propose to pay in full and complete satisfaction of such default claims. Any disputed cure amounts will be determined in accordance with the underlying agreements, and applicable bankruptcy and nonbankruptcy law. Thus, the Plan complies with section 1123(d) of the Bankruptcy Code.

M. The Debtors' Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors have complied with the applicable provisions of the Bankruptcy Code. Specifically:

- (a) Each of the Debtors is an eligible debtor under section 109 of the Bankruptcy Code;
- (b) The Debtors have complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Bankruptcy Court; and
- (c) The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules in transmitting the Plan, the Disclosure Statement, the Ballots, the Election Forms (as defined in the Election Procedures Motion), and related documents and notices and in soliciting and tabulating the votes on the Plan.

N. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan (including the Plan Supplement, the SPA Documents and all other documents necessary to effectuate the Plan) in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. The Debtors' good faith is evident from the facts and record of these Chapter 11 Cases, the Disclosure Statement, and the record of the Confirmation Hearing and other proceedings held in these Chapter 11 Cases. The Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtors' estates and to effectuate a successful reorganization of the Debtors. To the extent that the Plan was

opposed based on transactions intended by and between the Plan Sponsor and certain Insiders of the Debtors, those transactions are not part of the Plan and were not negotiated by the Debtors and so do not affect the Debtors' good faith. The Plan was negotiated at arms' length among representatives of the Debtors, the Creditors' Committee, the Equity Committee, the Plan Sponsor, the DIP Lenders, and the Debtors' prepetition lenders. Further, the Plan's classification, indemnification, exculpation, release, and injunction provisions have been negotiated in good faith and at arms' length, are consistent with sections 105, 1122, 1123(b)(6), 1129, and 1142 of the Bankruptcy Code, and are each necessary for the Debtors' successful reorganization.

O. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).

Any payment made or to be made by the Debtors, or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

P. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors

have complied with section 1129(a)(5) of the Bankruptcy Code. The identity and affiliations of the persons proposed to serve as the initial directors and officers of the Reorganized Debtors after confirmation of the Plan have been fully disclosed in the Plan Supplement, and the appointment to, or continuance in, such offices of such persons is consistent with the interests of holders of Claims against and Equity Interests in the Debtors and with public policy. The identity of any insider that will be employed or retained by the Reorganized Debtors and the nature of such insider's compensation have also been fully disclosed.

Q. No Rate Changes (11 U.S.C. § 1129(a)(6)). Section 1129(a)(6) of the Bankruptcy Code is satisfied because the Plan does not provide for any rate changes over which a governmental regulatory commission has jurisdiction.

R. Best Interest of Creditors (11 U.S.C. § 1129(a)(7)). The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. Only Class 10(a) is impaired under the Plan. The “best interest of creditors” test is satisfied. The liquidation analysis provided in the Disclosure Statement (and as testified to in the Snyder Declaration) (i) is persuasive and credible, (ii) has not been controverted by other evidence, (iii) is based on reasonable and sound assumptions, and (iv) provides a reasonable estimate of the liquidation values upon conversion to a case under chapter 7 of the Bankruptcy Code. Each holder of Equity Interests in Class 10(a) either has accepted the Plan or will receive or retain under the Plan, on account of its Equity Interest, property of a value, as of the Effective Date, that is substantially greater than the amount that such holder would receive or retain if the applicable Debtor were liquidated under chapter 7 of the Bankruptcy Code on such date. Based on the testimony and documentary evidence presented at the Confirmation Hearing, the Bankruptcy Court finds that the holders of Claims and Equity Interests in all Classes will receive at least as much under the Plan as they would have under a chapter 7 liquidation. Accordingly, the Plan satisfies the “best interest of creditors” test under section 1129(a)(7) of the Bankruptcy Code.

S. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Classes 1(a)-(g), Classes 2(a)-(c), Class 3, Classes 4(a)-(g), Classes 5(a)-(g), Classes 6(a)-(c), Classes 7(a)-(g), Class 8, Classes 9(a)-(g) and Classes 10(b)-(g) are unimpaired by the Plan and, accordingly, holders of Claims in such Classes are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Class 10(a) is impaired by the Plan. At least two-

thirds in amount of the Allowed Equity Interests held by equity holders in Class 10(a) that voted, even excluding the votes of Insiders, have voted to accept the Plan, as established by the KCC Declaration, in accordance with 1126(d) of the Bankruptcy Code.

T. Treatment of Administrative Expense Claims, Priority Tax Claims, DIP Claims, Secured Tax Claims, and Other Priority Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Expense Claims, Priority Tax Claims, DIP Claims, Secured Tax Claims and Other Priority Claims pursuant to Articles II and III of the Plan satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

U. Acceptance By Impaired Class of Claims (11 U.S.C. § 1129(a)(10)). The Plan does not impair any Class of Claims. Accordingly, section 1129(a)(10) is inapplicable in these Chapter 11 Cases.

V. Feasibility (11 U.S.C. § 1129(a)(11)). The evidence proffered or adduced at the Confirmation Hearing and set forth in the Cogdill Declaration (i) is persuasive and credible, (ii) has not been controverted by other evidence, and (iii) establishes that the Plan is feasible and that there is a reasonable prospect of the Reorganized Debtors being able to meet their financial obligations under the Plan and their businesses in the ordinary course, and that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtors, thereby satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code.

W. Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees due and payable pursuant to section 1930 of chapter 123 of title 28, United States Code, as determined by the Bankruptcy Code, have been or will be paid on the Effective Date pursuant to Section 13.6 of the

Plan by the Debtors, thereby satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

X. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). Section 8.10 of the Plan provides that on and after the Effective Date, the Reorganized Debtors shall continue to pay all retiree benefits of the Debtors (within the meaning of section 1114 of the Bankruptcy Code), if any, for the duration of the period for which the Debtors obligated themselves to provide such benefits, subject to the Reorganized Debtors' right to modify or terminate such benefits, if any, in accordance with the terms thereof, thereby satisfying the requirements of section 1129(a)(13) of the Bankruptcy Code.

Y. No Domestic Support Obligations (11 U.S.C. § 1129(a)(14)). The Debtors are not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. Accordingly, section 1129(a)(14) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

Z. Debtors Are Not Individuals (11 U.S.C. § 1129(a)(15)). The Debtors are not individuals, and accordingly, section 1129(a)(15) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

AA. No Applicable Nonbankruptcy Law Regarding Transfers (11 U.S.C. § 1129(a)(16)). The Debtors are each moneyed, business, or commercial corporations, and accordingly, section 1129(a)(16) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

BB. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). Class 10(a), the only impaired Class, has voted to accept the Plan. Accordingly, section 1129(b) is inapplicable in these Chapter 11 Cases.

CC. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan filed in these Chapter 11 Cases, and accordingly, section 1129(c) of the Bankruptcy Code is inapplicable in these chapter 11 cases.

DD. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933, thereby satisfying section 1129(d) of the Bankruptcy Code.

EE. Not Small Business Cases (11 U.S.C. § 1129(e)). These are not small business cases, and accordingly, section 1129(e) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

**Compliance with Section 1125 of the Bankruptcy Code**

FF. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record before the Bankruptcy Court in these Chapter 11 Cases, the Debtors, the Creditors' Committee, the Equity Committee, the Plan Sponsor, their respective members, directors, officers, employees, representatives, attorneys, financial advisors, investment bankers, and other professionals, and all other persons involved in the solicitation process, have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules in connection with all of their respective activities relating to the solicitation of acceptances to the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code. The parties identified in Section 10.7 of the Plan as being exculpated (the "Exculpated Parties"), and each of the Exculpated Parties' respective officers, directors, employees, accountants, financial advisors, investment bankers, agents, restructuring advisors (including all crisis and turnaround managers),



and attorneys, and each of their respective agents and representatives (but, in each case, solely in connection with their official capacities in these Chapter 11 Cases) shall be deemed to have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer and sale under the Plan of New PPC Common Stock, and the offer and sale under the Plan of equity interests in the Plan Sponsor pursuant to the Mandatory Exchange Transaction, and therefore are not, and on account of such offers and sales will not be, liable at any time for any violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or the offer and sale under the Plan of New PPC Common Stock or equity interest in the Plan Sponsor pursuant to the Mandatory Exchange Transaction are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Section 10.7 of the Plan.

#### **Plan Implementation**

GG. The terms of the Plan, including without limitation the Plan Supplement and all exhibits and schedules thereto, the SPA Documents, and all other documents filed in connection with the Plan and/or executed or to be executed in connection with the transactions contemplated by the Plan, and all amendments and modifications of any of the foregoing (collectively, the "Plan Documents") are incorporated by reference, are, except as addressed herein or in any future order of the Bankruptcy Court contemplated by this Confirmation Order, proper in all respects, and constitute an integral part of this Confirmation Order.

HH. The Plan and the Plan Documents have been negotiated in good faith and at arms' length and shall, on and after the Effective Date, except as addressed herein or in any future order of the Bankruptcy Court contemplated by this Confirmation Order, constitute legal,

valid, binding and authorized obligations of the respective parties thereto and will be enforceable in accordance with their terms.

II. Pursuant to section 1142(a) of the Bankruptcy Code, except as addressed herein or in any future order of the Bankruptcy Court contemplated by this Confirmation Order, the Plan and the Plan Documents will apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law. The Debtors, the Creditors' Committee, the Equity Committee, the Plan Sponsor, the DIP Lenders, the Debtors' prepetition lenders, the lenders under the Exit Facility, and all of their respective members, officers, directors, agents, financial advisers, investment bankers, attorneys, employees, equity holders, partners, affiliates, and representatives will be acting in good faith if they proceed to (i) consummate the Plan and the agreements, settlements, transactions, transfers and documentation contemplated thereby and (ii) take any actions authorized and directed by this Confirmation Order.

JJ. Exit Facility. The availability and funding of the loan proceeds to be available under the Exit Facility are necessary to the consummation of the Plan, the closing of the transactions contemplated by the SPA, and the operation of the Reorganized Debtors. The terms and conditions of the Exit Facility are fair and reasonable under the circumstances. The Debtors provided sufficient and adequate notice of the Exit Facility. The execution, delivery, and performance by the Debtors or Reorganized Debtors, as the case may be, of any documents in connection with the Exit Facility, and performance by the Debtors or Reorganized Debtors, as the case may be, with the terms thereof is authorized by, and will not conflict with, the terms of the Plan or this Confirmation Order. The financial accommodations to be extended pursuant to the Exit Facility Documents are being extended in good faith, for legitimate business purposes, are reasonable, and shall not be subject to recharacterization for any purposes whatsoever.

Moreover, the Exit Facility has been negotiated in good faith and at arms' length and each party thereto may rely on the provisions of this Confirmation Order in closing the Exit Facility.

KK. Stock Purchase Agreement. The SPA and all transactions, agreements and documents related thereto (the "SPA Documents") are essential elements of the Plan and entry into and consummation of the SPA Documents is in the best interests of the Debtors, their estates, their creditors and their equity holders. Entry into the SPA Documents presents the best opportunity to realize the highest value for the Debtors' estates, taking into account all relevant factors and circumstances. The Debtors exercised sound business judgment in determining to enter into the SPA Documents. The Debtors have provided all interested parties with sufficient and adequate notice of and an opportunity to be heard on the SPA Documents. The Plan Sponsor, its equity holders, directors, officers, employees, and advisors, have acted in good faith in connection with the Plan Documents, these Chapter 11 Cases and the formulation and confirmation of the Plan. Moreover, the SPA Documents were negotiated and have been or will be undertaken by the Debtors, the Plan Sponsor and their respective equity holders, directors, officers, employees, and advisors at arms-length, without collusion and in good faith within the meaning of section 363(m) of the Bankruptcy Code. As a result of the foregoing, the Plan Sponsor is a "good faith purchaser" and the Debtors and the Plan Sponsor are entitled to the protections of section 363(m) of the Bankruptcy Code (*provided, however*, that the Bankruptcy Court makes no finding respecting any agreement between the Plan Sponsor and any member of the board of directors of PPC). Neither the Debtors nor the Plan Sponsor have engaged in any conduct that would cause or permit the SPA Documents to be avoided under section 363(n) of the Bankruptcy Code. The terms and provisions of the SPA Documents, to the extent not already approved by the Bankruptcy Court on October 7, 2009 [Docket No. 3620], are approved

pursuant to this Confirmation Order and shall, upon the Effective Date, be valid, binding, and enforceable in accordance with their terms and shall not be in conflict with any federal or state law.

LL. New Employee Incentive Plans. The Debtors exercised sound business judgment in adopting the New Employee Incentive Plans. The Debtors have provided sufficient and adequate notice of the New Employee Incentive Plans to all parties in interest. As set forth in the KCC Declaration, holders of Equity Interests in Class 10(a) voted for adoption of the New Employee Incentive Plans.

MM. Distribution of Securities. Pursuant to section 1145 of the Bankruptcy Code, (i) the offer and sale under the Plan of New PPC Common Stock and (ii) the offer and sale under the Plan of equity interests in the Plan Sponsor pursuant to the Mandatory Exchange Transaction, are each exempt from the requirements of the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder, and applicable state securities laws.

#### **Executory Contracts and Unexpired Leases**

NN. The Debtors have exercised sound business judgment in determining whether to assume or reject each of their executory contracts and unexpired leases pursuant to Article VIII of the Plan. Each assumption or rejection of an executory contract or unexpired lease as provided in Sections 8.1 and 8.6 through 8.9 of the Plan shall be legal, valid, and binding upon the applicable Reorganized Debtor and all non-debtor counterparties to such contracts or leases, all to the same extent as if such assumption or rejection has been effectuated pursuant to an appropriate authorizing order of the Bankruptcy Court before the Confirmation Date under section 365 of the Bankruptcy Code.

OO. Except with respect to those executory contracts and unexpired leases listed on Exhibit C hereto, with respect to which a hearing to resolve an objection to the Debtors' proposed cure amount or assumption/rejection is adjourned to a later date, the Debtors have cured, or provided adequate assurances that the Reorganized Debtors will cure, defaults (if any) under or relating to each of the executory contracts and unexpired leases being assumed under the Plan. For clarification purposes, the Debtors agree that the listing of any cure amount as \$0 with respect to any of the executory contracts assumed pursuant to Section 8.9(d),(f)–(h) of the Plan does not affect any validly filed Proofs of Claim that the contract counterparty may have filed with respect to any purchase orders or other billings issued under such executory contract; and all such claims will be resolved pursuant to the claims resolution process set forth in the Plan.

#### **Exculpations, Injunctions and Releases**

PP. The Bankruptcy Court has jurisdiction under sections 1334(a) and (b) of title 28 of the United States Code to address the exculpation, injunctions and releases set forth in Article X of the Plan. The Court will address Article X of the Plan by separate order.

#### **Other Findings**

QQ. Valuation. The valuation analysis in Article VII of the Disclosure Statement and the total enterprise value described therein are reasonable.

RR. Conditions Precedent to Confirmation. The Debtors have satisfied all conditions precedent to confirmation set forth in Section 11.1 of the Plan.

SS. Retention of Jurisdiction. The Bankruptcy Court may properly retain, and if appropriate, shall exercise jurisdiction over the matters set forth in Article XII(a), (c)-(i), (l)-(q), and (t)-(v) of the Plan and section 1142 of the Bankruptcy Code. To the extent consistent

with the Bankruptcy Code and any prior or future order of the Bankruptcy Court, the Bankruptcy Court may further retain jurisdiction over the matters set forth in Article XII(b), (j)-(k), and (r)-(s) of the Plan.

TT. Objections. All parties have had a full and fair opportunity to litigate all issues raised by objections to confirmation of the Plan, or which might have been raised, and the objections to confirmation have been fully and fairly litigated.

UU. The Court finds that no evidence has been introduced that the treatment of Class 6 is inconsistent with the Indentures, subject to any determination that may be made of those issues set forth in Paragraph 17 of this Confirmation Order.

**The Plan Satisfies Confirmation Requirements**

VV. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Solicitation and Notice. Notice of the Confirmation Hearing complied with the terms of the Disclosure Statement Order, was appropriate and satisfactory based upon the circumstances of the Debtors' Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. The solicitation of votes on the Plan and the distribution of the Election Forms (as defined in the Election Procedures Motion) complied with the solicitation procedures in the Disclosure Statement Order and the Election Procedures Order, as applicable, were appropriate and satisfactory based upon the circumstances of the Debtors' Chapter 11 Cases, and were in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

2. Confirmation. The Plan, as further modified prior to the Confirmation Hearing in the form annexed hereto as Exhibit A (with any changes made to the Plan since November 17, 2009, attached hereto as Exhibit B), and each of its provisions, except as provided in this Confirmation Order or future order of this Bankruptcy Court contemplated by this Confirmation Order, shall be, and hereby is, confirmed under section 1129 of the Bankruptcy Code. The terms of the Plan Documents are incorporated by reference into and are an integral part of the Plan and this Confirmation Order.

3. Objections. All objections, responses, statements, and comments in opposition to the Plan, other than those withdrawn with prejudice in their entirety prior to the Confirmation Hearing or otherwise resolved on the record of the Confirmation Hearing and/or herein or addressed by this Confirmation Order or any future order of the Bankruptcy Court contemplated by this Confirmation Order are overruled for the reasons stated on the record. Those objections to cure amounts and/or assumption/rejection of certain contracts listed on Exhibit C hereto are adjourned to a date indicated therein.

4. Binding Effect. Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, on or after entry of this Confirmation Order and subject to the occurrence of the Effective Date, the provisions of the Plan shall bind (i) any holder of a Claim against or Equity Interest in the Debtors and their respective successors and assigns, whether or not such Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder has filed a proof of claim or accepted the Plan, (ii) any and all non-debtor parties to assumed executory contracts and unexpired leases with any of the Debtors, (iii) and any other party in interest in the Chapter 11 Cases, and the respective heirs, executors, administrators, successors, or assigns.

5. Continued Corporate Existence. Each Reorganized Debtor shall continue to exist after the Effective Date as a separate legal entity, with all the power of a corporation or a legal entity under applicable law in the jurisdiction in which each Debtor is incorporated or otherwise formed and pursuant to its Reorganized Debtor Constituent Documents.

6. Vesting of Assets (11 U.S.C. § 1141(b), (c)). As set forth in Section 10.1 of the Plan, as of the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of each Debtors' estates shall vest in the applicable Reorganized Debtor, free and clear of all Claims, liens, encumbrances, charges, and other interests, except as provided in the Plan or in this Confirmation Order. Any licenses or rights to use software, firmware and other intellectual property that were property of the Debtors' estates, or that were licensed to the Debtors on a fully paid basis, shall continue to vest in the Reorganized Debtors on the Effective Date. From and after the Effective Date, the Reorganized Debtors may operate their business and use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code, but in accordance with the provisions of the Plan. The vesting, on the Effective Date, of the property of the Debtors' estates in the Reorganized Debtors does not constitute a voidable transfer under the Bankruptcy Code or applicable nonbankruptcy law.

7. Claims of Prepetition Lenders. On the Effective Date, BMO and CoBank, in their capacity as agents for the lenders that are party from time to time to the Prepetition BMO Credit Agreement and the Prepetition CoBank Credit Agreement, respectively, shall be deemed to have an allowed BMO Secured Claim and an allowed CoBank Secured Claim, respectively, which will be fully secured and not subject to any avoidance, recharacterization, disallowance, subordination, recoupment, setoff, defense or counterclaim. Upon payment of the allowed BMO Secured Claim and the allowed CoBank Secured Claim, all mortgages, deeds of trust, liens, and



other security interests granted to secure the Prepetition BMO Credit Agreement and the Prepetition CoBank Credit Agreement shall be deemed cancelled, terminated, released, discharged, and extinguished and shall be of no further force and effect. To the extent that BMO or CoBank, or any of the lenders party to the Prepetition BMO Credit Agreement or the CoBank Credit Agreement (each a "Filing Lender"), have filed or recorded publicly any liens, financing statements and/or security interests to secure the Debtors' obligations under the Prepetition BMO Credit Agreement or the Prepetition CoBank Credit Agreement, as the case may be, such Filing Lender shall promptly take any and all commercially reasonable steps requested by the Debtors that are necessary to cancel, terminate, release, discharge and/or extinguish such publicly-filed liens, financing statements and/or security interests.

8. DIP Claims. Upon payment of the DIP Claims as provided in Section 2.4 of the Plan, if any such payment is due, all mortgages, deeds of trust, liens, and other security interests granted to secure the DIP Credit Agreement shall be deemed cancelled, terminated, released, discharged and extinguished and shall be of no further force and effect. To the extent that BMO, or any of the lenders party to the DIP Credit Agreement (each a "Filing DIP Lender"), have filed or recorded publicly any liens, financing statements and/or security interests to secure the Debtors' obligations under the DIP Credit Agreement, such Filing DIP Lender shall promptly take any and all commercially reasonable steps requested by the Debtors that are necessary to cancel, terminate, release, discharge and/or extinguish such publicly-filed liens, financing statements and/or security interests.

9. Intercompany Claims. The treatment of Intercompany Claims in Section 4.8 of the Plan is approved in its entirety.

10. Releases of Liens. Except as otherwise provided in the Plan or this Confirmation Order, or in any contract, instrument, release, or other agreement or document entered into or delivered in connection with the Plan, including the Exit Facility Documents, concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, liens, and other security interests against the property of any Debtor estate shall be fully cancelled, terminated, released, discharged and extinguished (except to the extent expressly reinstated under the Plan), and all right, title, and interest of any holder of such mortgages, deeds of trust, financing statements, liens, and other security interests, including any rights to any collateral thereunder, shall revert to the applicable Reorganized Debtor and its successors and assigns. For the avoidance of doubt, any statutory liens imposed on Allowed Secured Tax Claims or any postpetition taxes shall not be released and discharged until such Claims or postpetition taxes, as applicable, are paid pursuant the Plan or in the ordinary course of business, as applicable.

11. Retained Assets. To the extent that the succession to assets of the Debtors by the Reorganized Debtors pursuant to the Plan are deemed to constitute “transfers” of property, such transfers of property to the Reorganized Debtors (a) are or shall be legal, valid, and effective transfers of property, (b) vest or shall vest the Reorganized Debtors with good title to such property, free and clear of all liens, charges, Claims, encumbrances, or interests, except as expressly provided in the Plan or this Confirmation Order, (c) do not and shall not constitute avoidable transfers under the Bankruptcy Code or under applicable nonbankruptcy law, and (d) do not and shall not subject he Reorganized Debtors to any liability by reason of such transfer under the Bankruptcy Code or under applicable nonbankruptcy law, including, without limitation, by laws affecting successor or transferee liability.

12. Objections to Claims.

(a) General. Objections to all Claims against the Debtors (other than pursuant to section 510 of the Bankruptcy Code) may be interposed and prosecuted only by the Debtors and the Reorganized Debtors (except for Claims asserted under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4) and 503(b)(5), in which case the Committees and the Office of the United States Trustee may also interpose and prosecute objections). Prior to the Effective Date, except for objections that in the reasonable determination of the Debtors need to be filed on an emergency basis, the Debtors shall provide three (3) calendar days prior notice to the Plan Sponsor of their intent to file an objection to Claims and if timely requested by the Plan Sponsor, shall work with the Plan Sponsor in interposing such an objection. If any portion of a Claim is a Disputed Claim, no payment or distribution shall be made on account of such Claim unless and until such Claim becomes an Allowed Claim.

(b) Administrative Expense Claims. The holder of an Administrative Expense Claim, other than (i) a claim covered by sections 2.2, 2.3, or 2.4 of the Plan, (ii) a liability incurred and payable in the ordinary course of business by a Debtor (and not past due), (iii) an Administrative Expense Claim that has been Allowed on or before the Effective Date, or (iv) a claim subject to section 503(b)(9) of the Bankruptcy Code (with respect to which the deadline to file requests for payment has already expired), must file with the Bankruptcy Court and serve on the Debtors, the Reorganized Debtors, and the Office of the United States Trustee, notice of such Administrative Expense Claim on or prior to, unless otherwise ordered by the Bankruptcy Court, sixty (60) days after the later of (i) Effective Date, (ii) the date on which the claimant either knew or should have known of such Administrative Expense Claim, and (iii) in the event of a Claim for taxes, the date the tax return is due. Such notice must include at a

minimum (A) the name of the Debtor(s) which are purported to be liable for the Claim, (B) the name of the holder of the Claim, (C) the amount of the Claim, and (D) the basis of the Claim.

An Administrative Expense Claim with respect to which notice has been properly filed and served pursuant to Section 2.1(a) of the Plan shall become an Allowed Administrative Expense Claim if no objection is filed on or prior to the Administrative Expense Claims Objection Deadline. If an objection is timely filed, the Administrative Expense Claim shall become an Allowed Administrative Expense Claim only to the extent allowed by Final Order or settled, compromised, otherwise resolved by the Debtors or Reorganized Debtors pursuant to section 7.4 of the Plan.

(c) All Other Claims. Objections to Claims against the Debtors (other than Administrative Expense Claims and Professional Compensation Claims) shall be served and filed on or before the later of (a) one hundred and fifty (150) days after the Effective Date and (b) such later date as may be fixed by the Bankruptcy Court.

13. Estimation of Claims. Requests for estimation of any Claim against the Debtors may be interposed and prosecuted only by the Debtors or the Reorganized Debtors. Prior to the Effective Date, except for estimation requests that in the reasonable determination of the Debtors need to be made on an emergency basis, the Debtors shall provide three (3) calendar days prior notice to the Plan Sponsor of their intent to request estimation of any Claim and if timely requested by the Plan Sponsor, shall work with the Plan Sponsor in interposing such a request. The Debtors or the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any Contingent Claim, Unliquidated Claim, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether any of the Debtors or the Reorganized Debtors previously objected to such Claim or whether the Bankruptcy Court has

ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection; *provided, however*, that the Bankruptcy Court shall not have jurisdiction to estimate a Claim with respect to which a reference has been withdrawn or as to which the Bankruptcy Court lacks jurisdiction. In the event that the Bankruptcy Court estimates any Contingent Claim, Unliquidated Claim, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtors or the Reorganized Debtors may pursue supplementary proceedings to object to the allowance of such Claim. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

14. Record Date for Claim Distributions. The Reorganized Debtors and the Disbursing Agents shall have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim that occurs after the third (3rd) day following the Confirmation Date (the “Claims Distribution Record Date”), and shall be entitled for all purposes herein to recognize and distribute only to those holders of Allowed Claims who are holders of such Claims, or participants therein, as of the Claims Distribution Record Date.

15. Record Date for Equity Distributions. The Reorganized Debtors and the Disbursing Agents shall have no obligation to recognize the transfer of any Equity Interest that occurs after the Effective Date (the “Equity Distribution Record Date”), and shall be entitled for all purposes herein to recognize and distribute only to those holders of Equity Interests who are holders of such Equity Interests as of the Equity Distribution Record Date.

16. Note Claim Distributions. Distributions to holders of Allowed Note Claims shall be made pursuant to Section 4.6(b) of the Plan and shall be deemed to have been made from proceeds of the sale of New PPC Common Stock to the Plan Sponsor pursuant to the terms of the SPA. Any holder of an Allowed Note Claim that makes the Cash-Out Election shall as of the Effective Date be deemed to have waived all subordination rights under the applicable Indenture and applicable law. Distributions to holders of Allowed Senior Note Claims shall be deemed to occur immediately before any distributions under the Plan to holders of Allowed Subordinated Note Claims and Allowed Senior Subordinated Note Claims. Holders of Allowed Note Claims that make the Cash-Out Election shall be deemed to have been paid in full upon delivery to the applicable Disbursing Agent of Cash sufficient to make all distributions to such holders of Allowed Note Claims under Section 4.6(b)(ii) of the Plan and all right, title, and interest of holders of Allowed Note Claims that make the Cash-Out Election shall be deemed fully cancelled, terminated, released, discharged and extinguished when such holder's Allowed Note Claim is deemed to have been paid in full.

17. Briefing Schedule. The Debtors or the Reorganized Debtors, as applicable, and the applicable Indenture Trustees shall present to the Court within fifteen (15) Business Days after the Election Deadline (as defined in the Election Procedures Order) an agreed proposed briefing and scheduling order with respect to whether: (i) the Debtors are obligated to pay the holders of the Notes that are reinstated pursuant to section 1124 of the Bankruptcy Code (the "Reinstated Notes") (x) accrued interest at the additional or default rate specified in their respective Notes or Indentures rather than at the non-default contract rate specified therein, and (y) interest at the additional or default rate, rather than the non-default contract rate on defaulted payments of interest ((x) and (y), together, the "Additional Interest

Claims”), and (ii) with respect to the Senior Notes that are reinstated pursuant to section 1124 of the Bankruptcy Code (the “Reinstated Senior Notes”), pursuant to the subordination and other provisions of the Indentures governing the Notes, the holders of the Reinstated Senior Notes are entitled to recover the amount of the Additional Interest Claims in respect of the Reinstated Senior Notes from the distributions made under the Plan with respect to the Allowed Senior Subordinated Notes and Allowed Subordinated Notes in the event, and to the extent, that such Additional Interest Claims are not otherwise paid by the Debtors or allowed as claims against the Debtors (the “Senior Note Subordination Claims”).

18. Reserve Account. Within ten (10) days after the Election Deadline (as defined in the Election Procedures Order), the Debtors shall deposit into a separate account (the “Reserve Account”), Cash in an amount sufficient to pay the Additional Interest Claims to the holders of the Reinstated Notes. The Reserve Account shall be deemed separate from and not a part of the assets of the Debtors or their estates, and the Cash in the Reserve Account shall be held in trust for the benefit of the holders of the Reinstated Notes pending the Court’s determination of the disputes regarding the Additional Interest Claims and the Senior Note Subordination Claims. Notwithstanding anything herein to the contrary, the holders of Reinstated Senior Notes shall have claims only against the Reserve Account for the full amount of their Senior Note Subordination Claims not paid by the Debtors to the same extent that they could have asserted such claims against the indenture trustee for or holders of the Allowed Senior Subordinated Notes and Allowed Subordinated Notes, and the fact that any distributions made by the Debtors to the indenture trustee for or holders of the Allowed Senior Subordinated Notes and Allowed Subordinated Notes are distributed to holders of such notes shall not affect or be deemed a waiver of the rights of holders of Reinstated Senior Notes to enforce their Senior

Note Subordination Claims against the funds in the Reserve Account. Funds shall be disbursed (or returned to the Reorganized Debtors) from the Reserve Account only upon a further order(s) of this Court (or an appropriate appellate court) which shall be final and no longer subject to appeal.

19. Unclaimed Distributions. Any distributions under the Plan that are unclaimed for a period of one year after distribution thereof shall be unclaimed distributions and any entitlement of any holder of any Claim to such distributions shall be extinguished and forever barred. Such unclaimed distributions shall revert to the applicable Reorganized Debtor.

20. Professional Compensation. All applications for final allowance of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 328 and 330 of the Bankruptcy Code or applications for allowance of Administrative Expense Claims arising under section 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code (collectively, "Final Fee Applications") shall be due on or before March 31, 2010 (the "Final Fee Application Deadline"). Within ten (10) days following the Effective Date, the Debtors shall file a notice with the Bankruptcy Court scheduling a hearing to consider the Final Fee Applications, to be held on a date that is at least forty-five (45) days after the Final Fee Application Deadline. Each professional person or firm that timely files a Final Fee Application shall be paid in full in such amounts as are allowed by the Bankruptcy Court within fourteen (14) days after entry of a Final Order with respect to such professional's Final Fee Application. The Debtors and the Reorganized Debtors, as applicable, are authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Confirmation Date in the ordinary course of business and without the need for the Bankruptcy Court or Fee Review Committee approval.



21. Assumption or Rejection of Executory Contracts and Unexpired Leases.

(a) General. Pursuant to Section 8.1 of the Plan, all executory contracts and unexpired leases that exist between the Debtors and any person or entity shall be deemed rejected by the Debtors as of the Effective Date, except for any executory contract or unexpired lease (i) that has been assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court entered on or before the Effective Date, (ii) as to which a motion for approval of the assumption, assumption and assignment, or rejection has been filed and served prior to the Confirmation Date, (iii) that is specifically designated as a contract or lease to be assumed or assumed and assigned on Schedule 8.1, which Schedule is contained in the Plan Supplement, or (iv) that is designated as assumed pursuant to sections 8.6 through 8.9 of the Plan. Except with respect to those Objections listed on Exhibit C, upon the occurrence of the Effective Date, this Confirmation Order shall constitute (i) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption, or the assumption and assignment, as applicable, of the executory contracts and unexpired leases listed on Schedule 8.1 of the Plan or assumed pursuant to sections 8.6 through 8.9 of the Plan, and (ii) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Section 8.1 of the Plan and Schedules 8.7 and 8.9 of the Plan, if any. Listing a contract or a lease on Schedule 8.1 or any Assumption Notice or Supplemental Assumption Notice shall not constitute an admission by a Debtor or a Reorganized Debtor that such contract or lease is an executory contract or unexpired lease or that a Debtor or Reorganized Debtor has any liability thereunder.

(b) Non-Qualified Deferred Compensation Plans. The Reorganized Debtors shall, on the effective date, assume its non-qualified deferred compensation plans,

including any trusts established in connection therewith, and shall be authorized, in their discretion, to direct deferred compensation payments to be made by the trustee and in accordance with the terms of any such trust.

(c) Claims Relating to Executory Contracts and Unexpired Leases

Rejected Pursuant to the Plan and Bar Date for Rejection Damage Claims. Any Claim arising out of the rejection of an executory contract or unexpired lease pursuant to the Plan shall be classified as a General Unsecured Claim against the Debtor that is a party to such executory contract or unexpired lease. Claims arising out of the rejection of an executory contract or unexpired lease pursuant to the Plan must be filed with the Bankruptcy Court and served upon the relevant Debtor no later than thirty (30) days after the later of (i) the date of service of notice of the Effective Date, or (ii) the date of service of notice of such later rejection date that occurs as a result of a dispute concerning amounts necessary to cure any defaults (solely with respect to the party directly affected by such rejection). All such Claims not filed within such time will be forever barred and shall not be enforceable against the Debtors or the Reorganized Debtors, or their properties or interests in property as agents, successors, or assigns.

(d) Cure of Defaults. Pursuant to Section 8.4 of the Plan, except as

may otherwise be agreed to by the counterparty to the executory contract or unexpired lease, as soon as practicable after the Effective Date, the Reorganized Debtors shall pay all undisputed cure amounts. All disputed defaults that are required to be cured shall be cured either within thirty (30) days of the entry of a Final Order determining the amount, if any, of the Debtors' liability with respect to such cure amount, or as may otherwise be agreed to with the counterparty to such executory contract or unexpired lease. Except with respect to those executory contracts and unexpired leases listed on Exhibit C with respect to which an objection

to the Debtors' proposed cure amount remains pending, the cure amounts identified on Schedule 8.1 of the Plan (as filed in the amended Plan Supplement) and to the extent not inconsistent with Schedule 8.1 of the Plan, the Assumption Notices and Supplemental Assumption Notices, as applicable, and any cure amounts agreed on with the contract counterparty prior to entry of this Confirmation Order, represent the final cure amounts (the "Cure Amounts") and the contract counterparties to each such executory contract or unexpired lease are hereby barred and permanently enjoined from asserting against the Debtors or the Reorganized Debtors any defaults which must be cured other than the Cure Amounts. For the avoidance of doubt, the listing of any cure amount as \$0 with respect to any of the executory contracts assumed pursuant to Section 8.9(d),(f) –(h) of the Plan shall not affect any Claims of the contract counterparty with respect to any purchase orders issued under such executory contract; all such Claims shall be resolved pursuant to the claims resolution process set forth in the Plan. The Debtors and Reorganized Debtors shall be deemed to have satisfied each element required for assumption under sections 365 and 1123(b)(2) of the Bankruptcy Code upon payment of the Cure Amounts, if any.

22. General Authorization. The Debtors shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements and to take such other actions as may be necessary to effectuate and further evidence the terms and conditions of the Plan, the Plan Documents, and any notes or securities issued pursuant to the Plan. As of the Effective Date, the Debtors and their respective directors, officers, members, agents, attorneys, financial advisors and investment bankers are authorized and empowered pursuant to section 1142(b) of the Bankruptcy Code and other applicable state laws (i) to grant, issue, execute, deliver, file, or record any agreement, document, or security, including, without

limitation, the Exit Facility Documents, the SPA Documents, and the documents contained in the Plan Supplement, as modified, amended, and supplemented, in substantially the form included therein, (ii) to take any action necessary or appropriate to implement, effectuate, and consummate the Plan in accordance with its terms, and (iii) to take or cause to be taken all corporate actions necessary or appropriate to implement all provisions of, and to consummate, the Plan and the Plan Documents prior to, on and after the Effective Date and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act or action under any applicable law, order, rule or regulation, including, without limitation, any action required by the stockholders or directors of the Reorganized Debtors, including, among other things, (a) the adoption of the Reorganized Debtor Constituent Documents, including the Restated Certificate of Incorporation and Restated Bylaws, (b) the termination and cancellation of any outstanding instrument, document or agreement evidencing the Note Claims or Equity Interests in PPC, if applicable, (c) issuance of any New PPC Common Stock, (d) the execution and delivery of all documents arising in connection with the Exit Financing and the SPA Documents and performance of the Debtors' and the Reorganized Debtors' obligations thereunder, (e) approval of the New Employee Incentive Plans, (f) all transfers of assets that are to occur pursuant to the Plan, (g) the incurrence of all obligations contemplated by the Plan Documents and the making of all distributions under the Plan, (h) the implementation of all settlements and compromises as set forth in or contemplated by the Plan, (i) taking of all actions to preserve and provide for the prosecution of the Avoidance Actions as contemplated by sections 10.10 and 10.11 of the Plan and of all other causes of action, and (j) entering into any and all transactions, contracts, leases, instruments, releases, and other documents and arrangements permitted by applicable law, order, rule or

regulation. The approvals and authorizations specifically set forth in this Confirmation Order are nonexclusive and are not intended to limit the authority of any Debtor or Reorganized Debtor or any officer thereof to take any and all actions necessary or appropriate to implement, effectuate, and consummate any and all documents or transactions contemplated by the Plan or this Confirmation Order pursuant to section 1142(b) of the Bankruptcy Code. Pursuant to section 1142 of the Bankruptcy Code, to the extent that, under applicable nonbankruptcy law or the rules of any stock exchange, any of the foregoing actions otherwise would require the consent or approval of the stockholders or the boards of directors of any of the Debtors or Reorganized Debtors, this Confirmation Order shall constitute such consent or approval, and such actions are deemed to have been taken by unanimous action of the stockholders and directors of the appropriate Debtor or Reorganized Debtor. Any and all documents contemplated herein shall be accepted by each of the respective state filing offices and recorded, if required, in accordance with applicable state law and shall become effective in accordance with their terms and the provisions of state law.

23. Plan Supplement. The documents contained in the Plan Supplement and any amendments, modifications, and supplements thereto, and all documents and agreements introduced into evidence by the Debtors at the Confirmation Hearing (including all exhibits and attachments thereto and documents referenced therein), and the execution, delivery, and performance thereof by the Debtors are authorized and approved, including, but not limited to the Reorganized Debtor Constituent Documents, the Exit Facility Documents, and the New Employee Incentive Plans. Without need for further order or authorization of the Bankruptcy Court, the Debtors are authorized and empowered to make any and all modifications to any and

all documents included as part of the Plan Supplement that do not materially modify the terms of such documents and are consistent with the Plan.

24. SPA Documents. The SPA Documents, as amended, comply in all respects with the Bankruptcy Code and, to the extent not already approved, are hereby approved and authorized in their entirety. The Debtors and the Reorganized Debtors are authorized to consummate the transactions contemplated by the SPA Documents and perform all obligations referred to therein, without the need for further corporate action or further order of the Bankruptcy Court and without any further action by holders of Claims or Equity Interests. The SPA Documents shall constitute legal, binding and authorized obligations of the Debtors and the Reorganized Debtors, enforceable in accordance with their terms.

25. Exit Facility. The Exit Facility Documents are hereby approved in their entirety. The Reorganized Debtors are authorized to execute, deliver, file, or record the Exit Facility Documents and to take such other actions as may be necessary to effectuate the Exit Facility arrangement and perform all obligations, including the payment of fees and other amounts referred to in the Exit Facility Documents. The Reorganized Debtors' entry into the Exit Facility pursuant to the Exit Facility Documents and the incurrence of the indebtedness thereunder on or as soon as reasonably practicable following the Effective Date are hereby authorized without the need for any further corporate action or further order of the Bankruptcy Court and without any further action by holders of Claims or Equity Interests. The Exit Facility Documents shall constitute legal, binding and authorized obligations of the Reorganized Debtors, enforceable in accordance with their terms. On the Effective Date, all of the liens and security interests to be granted in accordance with the Exit Facility shall be deemed to be approved and shall be legal, binding and enforceable liens on the collateral granted thereunder.

26. New Employee Incentive Plans. The New Employee Incentive Plans have been approved by the requisite amount of holders of Equity Interests. Pursuant to section 1142(b) of the Bankruptcy Code, adoption of the New Employee Incentive Plans by the Reorganized Debtors is hereby authorized and approved.

27. Directors and Officers of Reorganized Debtors. The appointment of the initial directors of the Reorganized Debtors as disclosed at or prior to the Confirmation Hearing is hereby approved without the necessity for consent or approval of the stockholders, as of and immediately following the Effective Date. The initial directors of the Reorganized Debtors shall be considered to have taken office at a point in time immediately following the Effective Date.

28. Authorization of New Securities. Pursuant to Section 5.8 of the Plan, Reorganized PPC is hereby authorized to issue New PPC Common Stock on or as soon as reasonably practicable following the Effective Date, without the need for any further corporate action or further order of the Bankruptcy Court and without any further action by holders of Claims or Equity Interests. Newly-issued shares of New PPC Common Stock will be subject to the Mandatory Exchange Transaction, on the terms and conditions set forth in the Plan, the Restated Certificate of Incorporation, and the Stockholders Agreement.

29. Securities Laws Exemption. In accordance with section 1145(a) of the Bankruptcy Code, the offer and sale under the Plan of New PPC Common Stock, and the offer and sale under the Plan of equity interests in the Plan Sponsor pursuant to the Mandatory Exchange Transaction, will be exempt from registration under the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder, and under applicable state securities laws. The issuance of New PPC Common Stock shall be exempt from the requirements of section 16(b) of the Securities Exchange Act of 1934 (pursuant to Rule 16b-3

promulgated thereunder) with respect to any acquisition of such securities or pecuniary interest therein by an officer or director as of the Effective Date.

30. Payment of Statutory Fees. All fees due and payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court, shall be paid on or before the Effective Date without the need to file any applications with the Bankruptcy Court. The Debtors and the Reorganized Debtors, as applicable, shall continue to pay all fees due and payable pursuant to section 1930 of title 28 of the United States Code until the closing of such Debtor's respective Chapter 11 Case.

31. Payment of Indenture Trustee Fees. Upon presentment of a detailed invoice to the Reorganized Debtors and after an opportunity to review such detailed invoice, the Reorganized Debtors shall pay all reasonable fees, costs and expenses incurred by the Indenture Trustees in connection with the distributions required pursuant to the Plan or the implementation of any provisions of the Plan (including the reasonable fees, costs and expenses incurred by the Indenture Trustee's professionals). The Indenture Trustees shall not be required to file an application for allowance of an Administrative Claim with respect to the Indenture Trustee Claims.

32. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, and regulations of any state or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Plan Documents, the Disclosure Statement, and any documents, instruments, or agreements, and any amendments or modifications thereto.



33. Filing and Recording. This Confirmation Order (a) is and shall be effective as a determination that, on the Effective Date, all Claims and Equity Interests existing prior to such date have been unconditionally released, discharged, and terminated, except as otherwise provided in the Plan, and (b) is and shall be binding upon and shall govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required, by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any document or instrument. Each and every federal, state, and local government agency is hereby directed to accept any and all documents and instruments necessary, useful, or appropriate (including Uniform Commercial Code financing statements) to effectuate, implement, and consummate the transactions contemplated by the Plan Documents and this Confirmation Order without payment of any recording tax, stamp tax, transfer tax, or similar tax imposed by state or local law.

34. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of equity securities under the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, the New PPC Common Stock, the Exit Facility, the SPA Documents, any merger agreements or agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax. All sale transactions consummated by the

Debtors and approved by the Bankruptcy Court on and after the Commencement Date through and including the Effective Date, including, without limitation, the transfers effectuated under the Plan Documents, the sale by the Debtors of owned property pursuant to section 363(b) of the Bankruptcy Code, and the assumption, assignment, and sale by the Debtors of unexpired leases of non-residential real property pursuant to section 365(a) of the Bankruptcy Code, shall be deemed to have been made under, in furtherance of, or in connection with the Plan and, thus, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

35. Discharge of Claims and Termination of Equity Interests. Pursuant to Section 10.2 of the Plan, except as otherwise provided in the Plan, the rights afforded in and the payments and distributions to be made under the Plan shall be in exchange for and in complete satisfaction, discharge, termination, and cancellation of all existing debts, Claims and Equity Interests of any kind, nature, or description whatsoever, including any interest accrued on any Claims from and after the Commencement Date, against the Debtors or any of their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as provided in the Plan, upon the Effective Date, all existing Claims against and Equity Interests in the Debtors shall be, and shall be deemed to be, discharged, terminated, and cancelled, as applicable, and all holders of Claims and Equity Interests shall be precluded and enjoined from asserting against the Reorganized Debtors, their successors or assignees, or any of their assets or properties, any other or further Claim based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a proof of Claim, and whether or not the facts or legal bases therefore were known or existed prior to the Effective Date.

36. Discharge of Debtors. Pursuant to Section 10.3 of the Plan, upon the Effective Date and in consideration of the distributions to be made under the Plan, except as otherwise expressly provided in the Plan, each holder (as well as any trustee or agent on behalf of any holder) of a Claim and any affiliate of such holder, except as otherwise expressly provided in this Confirmation Order, shall be deemed to have forever waived and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, rights, and liabilities that arose prior to the Effective Date. As provided in section 524 of the Bankruptcy Code, such discharge shall void any judgment against the Debtors, their estates, or any successor thereto at any time obtained to the extent it relates to a Claim discharged. Upon the Effective Date, all persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any discharged Claim against the Debtors, the estates, or any successor thereto.

37. Injunctions.

**(a) Pending further order of the Bankruptcy Court, pursuant to Section 10.4 of the Plan, except as otherwise expressly provided in the Plan, all persons or entities who have held, hold or may hold Claims against or Equity Interests in the Debtors, along with their respective present and former employees, agents, officers, directors, principals and affiliates, are temporarily enjoined, from and after the Effective Date, from taking any of the following actions against the Debtors, the Reorganized Debtors, their respective estates, any Protected Person, or any of their respective property with respect to such Claim or Equity Interest (other than actions brought to enforce any rights or obligations under the Plan):**

**(i) commencing or continuing in any manner any action or other proceeding of any kind,**

**(ii) enforcing, attaching, collecting or recovering by any manner or means, whether directly or indirectly, of any judgment, award, decree or order,**

**(iii) creating, perfecting, or enforcing, in any manner, directly or indirectly, any encumbrance of any kind,**

**(iv) asserting any right of setoff, subrogation or recoupment of any kind (except with respect to any valid right of setoff under section 553 of the Bankruptcy Code applicable to any Allowed Claim for taxes that was properly and timely filed with the Bankruptcy Court by the applicable deadlines established by the Bankruptcy Court for filing such Claims), or**

**(v) pursuing any Claim released pursuant to Article XII of the Plan.**

**Such injunction shall extend to any successors of the Debtors and the Reorganized Debtors and their respective properties and interests in properties.**

**(b) Additionally, upon the entry of this Confirmation Order, all holders of Claims and Equity Interests, and other parties in interest, along with their respective present and former employees, agents, officers, directors, principals and affiliates are hereby enjoined from taking any actions (other than by or in connection with an appeal of this Confirmation Order) to interfere with the implementation or consummation of the Plan.**

38. Terms of Injunctions or Stays. Pursuant to Section 10.5 of the Plan, unless otherwise provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay; *provided, however*, that on the Effective Date, the stay shall be replaced, to the extent provided in this Confirmation Order, with an injunction set forth in Section 10.4 of the Plan and/or sections 524 and 1141 of the Bankruptcy Code, *provided* that nothing herein shall bar the filing of financing documents (including Uniform Commercial

Code financing statements, security agreements, leases, mortgages, trust agreements, bills of sale, and applications for aircraft registration) or the taking of such other actions as are necessary to effectuate the transactions specifically contemplated by the Plan or by this Confirmation Order prior to the Effective Date.

**39. Releases by Holders of Claims and Equity Interests.**

**(a) Releases Related to Claims and Equity Interests. Pursuant to Section 10.8 of the Plan, except as otherwise expressly provided in the Plan, on the Effective Date, and in consideration for the obligations of the Debtors and the Reorganized Debtors under the Plan, each holder of a Claim or an Equity Interest that votes to accept the Plan (or is deemed to accept the Plan), and to the fullest extent permissible under applicable law, as such law may be extended or integrated after the Effective Date, each holder of a Claim or Equity Interest that does not vote to accept the Plan, shall release and discharge unconditionally and forever each (i) Debtor, (ii) Reorganized Debtor and (iii) Protected Person (to the extent provided for in further order of the Bankruptcy Court) from any and all claims and causes of action that exist as of the Effective Date and arise from or relate to, in any manner, in whole or in part, the Claim or Equity Interest of such holder, the subject matter of, or the transaction or event giving rise to, the Claim or Equity Interest of such holder, the business or contractual arrangements between any Debtor and such holder, any restructuring of such Claim or Equity Interest prior to the Chapter 11 Cases, or any act, omission, occurrence, or event in any manner related to such subject matter, transaction or obligation, or arising out of the Chapter 11 Cases, including, but not limited to, the pursuit of confirmation of the Plan, the consummation thereof, the administration thereof, or the property to be distributed thereunder; *provided*, that the foregoing shall not operate as a**

**waiver of or release from any claims or causes of action arising out of the willful misconduct, gross negligence, fraud, criminal conduct, intentional unauthorized misuse of confidential information that causes damages, or *ultra vires* acts of any such person or entity.**

**(b) Optional Releases. On the Effective Date, and in consideration for the obligations of the Debtors and the Reorganized Debtors under the Plan, each person or entity that has a claim or cause of action against any Protected Person shall also have an option, subject to entry, without further court approval, into an appropriate stipulation with the Debtors or the Reorganized Debtors, as applicable, to (i) if there is no applicable insurance coverage, file a Proof of Claim against the Debtors relating to such person or entity's claim or cause of action, which proof of claim shall be resolved and paid pursuant to the terms of this Plan, and unconditionally and forever release such claim or cause of action against the relevant Protected Person, or (ii) if there is applicable insurance coverage, seek payment of such claim or cause of action solely from the applicable insurance policy and unconditionally and forever release any and all such claims or causes of action against the relevant Protected Person, Debtors and Reorganized Debtors.**

**(c) For the avoidance of doubt, other than with respect to Cure Amounts and any Claims filed in relation to such executory contract or unexpired lease (which shall remain subject to the Claims resolution provisions of the Plan), nothing in the Plan or this Confirmation Order shall (i) impair or affect parties' rights, priorities, and obligations under any executory contract or unexpired lease assumed under the Plan or another order of this Court or (ii) terminate or cancel, or affect the effectiveness of, any uniform commercial code financing**

statements and filings of non-Debtor parties related to such assumed unexpired leases and executory contracts.

40. **Claims and Setoff and Recoupment Rights of Governmental Units.**

(a) **Claims of Governmental Units.** Notwithstanding anything herein to the contrary, nothing in the Plan or the Confirmation Order shall operate as a waiver of or a release or exculpation of any claim or cause of action or action for regulatory compliance (x) held by a Governmental Unit against any non-Debtor, or (y) held by a Governmental Unit against any Debtor, other than those Claims of any Governmental Unit that are subject to the deadlines established by orders of the Bankruptcy Court for filing proofs of claim or requests for payment of administrative expenses (clauses (x) and (y) collectively referred to herein as the “Non-Released Government Claims”). Nor shall anything in the Plan or the Confirmation Order enjoin any Governmental Unit from bringing any claim, suit, action, or other proceeding against any party or person, including any Protected Person, for liability under any Non-Released Government Claim. For the avoidance of doubt, a Governmental Unit includes, as examples, and without limitation, the Food Safety and Inspection Service, the Grain Inspection, Packers and Stockyards Administration, the Agriculture Marketing Service, and the Food and Nutrition Service of the United States Department of Agriculture.

(b) **Setoff and Recoupment Rights of Governmental Units.**

Notwithstanding anything herein or in the Plan, a Governmental Unit may assert (i) any valid, enforceable setoff rights under applicable law to the extent allowed under section 553 of the Bankruptcy Code and (ii) may assert any valid, enforceable recoupment rights under applicable law upon an order of the Bankruptcy Court or agreement of the parties.

41. **Releases by Debtors and Reorganized Debtors.** Pursuant to Section 10.9 of the Plan, upon the Effective Date, and in consideration of the services provided to the Debtors by such persons, each Debtor and Reorganized Debtor shall release and discharge unconditionally and forever each Protected Person (however, in the case of the Plan Sponsor, only those claims and causes of action not related to the Plan Sponsor's obligations under the SPA) from any and all claims and causes of action that exist as of the Effective Date and arise from or relate to, in any manner, in whole or in part, the operation of the business of the Debtors, the business or contractual arrangements between any Debtor and any such person or entity, or any act, omission, occurrence, or event in any manner related to such subject matter, transaction or obligation, or arising out of the Chapter 11 Cases, including, but not limited to, the pursuit of confirmation of the Plan, the consummation thereof, the administration thereof, or the property to be distributed thereunder; *provided*, that the foregoing shall not operate as a waiver of or release from any claims or causes of action arising out of the willful misconduct, gross negligence, fraud, criminal conduct, intentional unauthorized misuse of confidential information that causes damages, or *ultra vires* acts of any such person or entity.

42. **Retention of Avoidance Actions.** Pursuant to Section 10.10 of the Plan, from and after the entry of this Confirmation Order, the Debtors shall retain the exclusive right to pursue, prosecute and enforce any and all Avoidance Actions, equitable subordination actions or recovery actions under sections 105, 502(d), 510, 542 through 551, and 553 of the Bankruptcy Code that belonged to the Debtors or Debtors in Possession prior to the Confirmation Date, other than with respect to any cause of action or Avoidance Action released in the Plan, in the Confirmation Order, or in any other Final Order of the Bankruptcy Court. On the Effective Date,



the Debtors' right to pursue, prosecute and enforce the actions listed in the immediately preceding sentence shall transfer to the Reorganized Debtors, which on and after the Effective Date shall have the exclusive right to pursue, prosecute and enforce such actions.

43. Retention of Causes of Action/Reservation of Rights.

(a) Except as provided in sections 10.7 and 10.9 of the Plan, from and after the Confirmation Date, the Debtors shall retain the right to pursue, prosecute and enforce any rights, causes of action or counterclaims that the Debtors have under any provision of the Bankruptcy Code or any applicable nonbankruptcy law, including, without limitation, (i) any and all Claims against any Entity, to the extent such Entity asserts a crossclaim, a counterclaim, and/or a Claim for setoff that seeks affirmative relief against the Debtors, the Reorganized Debtors, their officers, directors, or representatives, (ii) any and all Claims and causes of action for turnover of any property of the Debtors' estates, (iii) any and all Claims and causes of actions that are listed on the Debtors' Schedules, and (iv) any and all Claims and causes of action that are subject to pending litigation in either the Bankruptcy Court or a non-bankruptcy forum. On the Effective Date, the Debtors' right to pursue, prosecute and enforce the actions listed in the immediately preceding sentence shall transfer to the Reorganized Debtors, which on and after the Effective Date shall have the exclusive right to pursue, prosecute and enforce such actions. Nothing contained in the Plan or this Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, causes of action or counterclaims that the Debtors or the Reorganized Debtors may have.

(b) Nothing contained in the Plan or this Confirmation Order shall be deemed to be a waiver or relinquishment of any claim, cause of action, right of setoff, or other legal or equitable defense that the Debtors had immediately prior to the Commencement Date,

against or with respect to any Claim. After the Confirmation Date, the Debtors and the Reorganized Debtors, as applicable, shall have, retain, reserve, and be entitled to assert all such claims, causes of action, rights of setoff, and other legal or equitable defenses that the Debtors had immediately prior to the Commencement Date as fully as if the Chapter 11 Cases had not been commenced, and all of the Debtors' and the Reorganized Debtors' legal and equitable rights respecting any Claim may be asserted after the Confirmation Date to the same extent as if the Chapter 11 Cases had not been commenced.

44. DIP Surety Facility. On June 5, 2009, this Court entered an order (the "DIP Surety Order") authorizing the Debtors to enter into a postpetition surety facility with Liberty Mutual Insurance Company ("Liberty"). In furtherance thereof, on June 15, 2009, the Debtors and Liberty executed that certain Term Sheet, Addendum to Indemnity and Pledge Agreement (collectively, the "DIP Surety Facility Agreement"). Nothing in this Confirmation Order or the Plan shall alter, modify or limit the rights and obligations of the Debtors, the Reorganized Debtors or Liberty under the DIP Surety Facility Agreement. Notwithstanding anything in this Confirmation Order or the Plan to the contrary, on the Effective Date, the obligations of the Debtors under the DIP Surety Facility Agreement shall continue to be the obligations of the Reorganized Debtors.

45. Dissolution of the Committees. Pursuant to Section 13.8 of the Plan, on the later of (i) Effective Date, (ii) the resolution of the disputes referred to in Paragraph 17 of this Confirmation Order, and (iii) the hearing on Final Fee Applications, the Committees shall be dissolved and the members thereof shall be released and discharged of and from all further authority, duties, responsibilities and obligations relating to and arising from and in connection with the Chapter 11 Cases; *provided, however*, that in the event this Confirmation Order is

appealed, any Committee may elect to delay its dissolution until the conclusion of the appeal so as to participate in such appeal. On the Effective Date, the retention or employment of all attorneys, financial advisors, accountants and other agents of the Creditors' Committee and Equity Committee shall terminate other than for purposes of (i) filing, prosecuting and objecting to applications for final allowances of compensation for professional services rendered and reimbursement of expenses incurred in connection therewith, (ii) participating in any appeal of the Confirmation Order, and (iii) participating in resolution of issues related to the Additional Interest Claims and Senior Note Subordination Claims. To the extent not discharged and released on or prior to the Confirmation Date, on the fifteenth (15<sup>th</sup>) day following the entry of an order in respect of the last of any outstanding fee applications, the Fee Review Committee shall be released and discharged from its obligations pursuant to the Order Granting Motion for (I) Appointment of a Fee Review Committee and (II) Amendment of the Interim Compensation Order [Docket No. 1624].

46. Modification of the Plan. After the Confirmation Date, so long as such action does not materially and adversely affect the treatment of holders of Claims or Equity Interests under the Plan, the Debtors or the Reorganized Debtors may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or this Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan. A holder of a Claim or Equity Interest that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Claim or Equity Interest of such holder.

47. Notice of Entry of Confirmation Order and Occurrence of the Effective

Date. On or before the date that is fourteen (14) days after occurrence of the Effective Date, the Debtors shall file with the Bankruptcy Court and serve by first class mail or overnight delivery service, a notice of the entry of this Confirmation Order and occurrence of the Effective Date, in substantially the form annexed hereto as **Exhibit D** (the "Confirmation Notice"), on each of the following at their respective addresses last known to the Debtors: (i) the Office of the United States Trustee for the Northern District of Texas; (ii) counsel to the Committees; (iii) counsel for the Plan Sponsor; (iv) counsel to the Debtors' prepetition secured lenders; (v) counsel to the Agent to the Debtors' postpetition lenders; (vi) all parties on the Master Service List filed with the Bankruptcy Court; (vii) all persons or entities listed in the Debtors' schedules of assets and liabilities, or any amendments thereto, and (viii) any other known holders of Claims against or Equity Interests in the Debtors (collectively, the "Notice Parties"); *provided, however*, that the Confirmation Notice shall not be served upon any person or entity to whom the Debtors have mailed other notices during these Chapter 11 Cases that have been returned as undelivered, unless the Debtors have been informed in writing by such person or entity of that person or entity's new address. Such service shall constitute good and sufficient notice pursuant to Bankruptcy Rule 2002(f)(7), 2002(i)-(l) and 3020(c) of the confirmation of the Plan, the entry of this Confirmation Order and occurrence of the Effective Date. Within fifteen (15) days after occurrence of the Effective Date, the Debtors shall also publish the Confirmation Notice, with any modifications necessary for publication, once in the national edition of *The Wall Street Journal*, the *USA Today*, *The Mount Pleasant Daily Tribune*, a Texas publication, and the *El Nuevo Dia*, a Puerto Rican newspaper.

48. Conditions to Effective Date. The Plan shall not become effective unless and until the conditions set forth in Article XI of the Plan have been satisfied or waived pursuant to Section 11.2 of the Plan.

49. Authorization to Consummate Plan. Notwithstanding Bankruptcy Rule 3020(e), but subject to Article XI of the Plan, the Bankruptcy Court authorizes the Debtors to consummate the Plan upon entry of this Confirmation Order. The Debtors are authorized to execute, acknowledge, and deliver such deeds, assignments, conveyances, and other assurances, documents, instruments of transfer, Uniform Commercial Code financing statements, trust agreements, mortgages, indentures, security agreements, and bills of sale and to take such other actions as may be reasonably necessary to perform the terms and provisions of the Plan, all transactions contemplated by the Plan, and all other agreements related thereto.

50. Effect of Failure of Conditions to Effective Date. In the event the conditions precedent specified in Section 11.1 of the Plan have not been satisfied or waived pursuant to Section 11.2 of the Plan on or prior to the one hundred and eightieth (180th) day after the Confirmation Date, then (i) this Confirmation Order shall be vacated, (ii) no distributions under the Plan shall be made, (iii) the Debtors and all holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, (iv) all of the Debtors' obligations with respect to the Claims and Equity Interests shall remain unchanged and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtors or any other Entity or to prejudice in any manner the rights of the Debtors or any other Entity in any further proceedings involving the Debtors, and (v) nothing contained herein or in the Plan

shall prejudice in any manner the rights of the Debtors, including, without limitation, the right to seek a further extension of the exclusive periods under section 1121(d) of the Bankruptcy Code.

51. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

52. Right to Revoke Plan. The Debtors shall have the right to revoke or withdraw the Plan with respect to any Debtor prior to the Effective Date. If the Debtors take such action, the Plan with respect to the relevant Debtor shall be deemed null and void. In such event, nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims by or against the Debtors or any other person or to prejudice in any manner the rights of the Debtors or any person in any further proceedings involving the relevant Debtor.

53. Retention of Jurisdiction. Upon the Effective Date, the Bankruptcy Court may properly retain, and if appropriate, shall exercise jurisdiction over the matters set forth in Article XII(a), (c)-(i), (l)-(q), and (t)-(v) of the Plan and section 1142 of the Bankruptcy Code. To the extent consistent with the Bankruptcy Code and any prior or future order of the Bankruptcy Court, the Bankruptcy Court may further retain jurisdiction over the matters set forth in Article XII(b), (j)-(k), and (r)-(s) of the Plan.

54. Governing Law. Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit to the Plan or a schedule or document in the Plan Supplement provides otherwise, the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, without giving effect to the principles of conflict of laws thereof; *provided, however*, that the SPA shall be governed by the laws as set forth therein.

55. Appeal of the Confirmation Order. Except as otherwise provided in this Confirmation Order, if any or all of the provisions of this Confirmation Order are hereafter reversed, modified, vacated, or stayed by subsequent order of the Bankruptcy Court, or any other court, such reversal, stay, modification or vacatur shall not affect the validity or enforceability of any act, obligation, indebtedness, liability, priority, or lien incurred or undertaken by the Debtors or Reorganized Debtors, as applicable, prior to the effective date of such reversal, stay, modification, or vacatur. Notwithstanding any such reversal, stay, modification, or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, or in reliance on, this Confirmation Order prior to the effective date of such reversal, stay, modification, or vacatur shall be governed in all respects by the provisions of this Confirmation Order and the Plan or any amendments or modifications thereto.

56. Severability. Each term and provision of the Plan, as it may have been altered or interpreted by this Bankruptcy Court, is valid and enforceable pursuant to its terms.

57. Conflicts Between Confirmation Order and Plan. The failure to specifically include any particular provision of the Plan in this Confirmation Order or any further order of the Bankruptcy Court contemplated by this Confirmation Order will not diminish the effectiveness of such provision, it being the intent of the Bankruptcy Court that the Plan is confirmed in its entirety and incorporated herein by this reference. The provisions of the Plan Documents, this Confirmation Order, and any further order of the Bankruptcy Court contemplated by this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; *provided, however*, that if there is any inconsistency between the provisions of the Plan Documents and this Confirmation Order or any further order of the Bankruptcy Court contemplated by this Confirmation Order, the terms and conditions

contained in this Confirmation Order or such further order of the Bankruptcy Court shall govern and shall be deemed a modification to the Plan and shall control and take precedence. The provisions of this Confirmation Order are integrated with each other and are nonseverable and mutually dependent unless expressly stated by further order of the Bankruptcy Court.

58. Separate Confirmation Orders. This Confirmation Order is and shall be deemed a separate Confirmation Order with respect to each of the Debtors in each Debtor's separate Chapter 11 Case for all purposes. The Clerk of the Bankruptcy Court is directed to file and docket this Confirmation Order in the Chapter 11 Case of each of the Debtors.

59. Notwithstanding Bankruptcy Rules 3020(e), 6004(g), 6006(d), 7062 or otherwise, the Confirmation Order shall take effect on December 21, 2009 at 12:01 a.m. (prevailing Central Time).

###END OF ORDER###