

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

In re:)	Chapter 11
Trinity River Resources, LP)	Case No. 16-10472 (TMD)
Debtor.)	

DISCLOSURE STATEMENT FOR THE DEBTOR'S
PROPOSED FIRST AMENDED CHAPTER 11 PLAN OF LIQUIDATION

IMPORTANT DATES

- Date by which Ballots must be received: [#]
- Deadline by which objections to Confirmation of the Plan must be Filed and served: [#]
- Hearing on Confirmation of the Plan: [#]

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THE FINANCIAL INFORMATION CONTAINED IN OR INCORPORATED BY REFERENCE INTO THE DISCLOSURE STATEMENT HAS NOT BEEN AUDITED, EXCEPT AS SPECIFICALLY INDICATED OTHERWISE.

THE PROJECTIONS PROVIDED IN THE DISCLOSURE STATEMENT, WHILE PRESENTED WITH NUMERICAL SPECIFICITY, ARE NECESSARILY BASED ON A VARIETY OF ESTIMATES AND ASSUMPTIONS THAT, THOUGH CONSIDERED REASONABLE BY THE DEBTOR AND ITS PROFESSIONALS, MAY NOT BE REALIZED, AND ARE INHERENTLY SUBJECT TO SIGNIFICANT BUSINESS, ECONOMIC, COMPETITIVE, INDUSTRY, REGULATORY, MARKET, AND FINANCIAL UNCERTAINTIES AND CONTINGENCIES, MANY OF WHICH ARE BEYOND THE DEBTOR'S CONTROL. THE DEBTOR CAUTIONS THAT NO REPRESENTATIONS CAN BE MADE AS TO THE ACCURACY OF THESE PROJECTIONS OR TO THE ABILITY TO ACHIEVE THE PROJECTED RESULTS.

THE BANKRUPTCY COURT HAS SCHEDULED THE CONFIRMATION HEARING TO COMMENCE ON [DATE AND TIME] PREVAILING CENTRAL TIME BEFORE THE HONORABLE TONY M. DAVIS UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION, 903 SAN JACINTO BLVD., COURTROOM #1, AUSTIN, TEXAS 78701. THE CONFIRMATION HEARING MAY BE ADJOURNED FROM TIME TO TIME BY THE BANKRUPTCY COURT WITHOUT FURTHER NOTICE EXCEPT FOR AN ANNOUNCEMENT OF THE ADJOURNED DATE MADE AT THE CONFIRMATION HEARING OR ANY ADJOURNMENT OF THE CONFIRMATION HEARING.

TO BE COUNTED, THE BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED BY THE VOTING AGENT FOR THE DEBTOR IN THIS CHAPTER 11 CASE, NO LATER THAN [#].

OBJECTIONS TO CONFIRMATION OF THE PLAN MUST BE FILED AND SERVED ON OR BEFORE [#]. UNLESS OBJECTIONS TO CONFIRMATION ARE TIMELY SERVED AND FILED IN COMPLIANCE WITH THE ORDER APPROVING THE DISCLOSURE STATEMENT, THEY MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

TABLE OF CONTENTS

SUMMARY OF PLAN.....1

ARTICLE I BACKGROUND1

 1.1 Introduction.....1

 1.2 Sources of Information2

 1.3 Description of Debtor’s Business and Assets2

 1.4 Debtor’s Corporate Structure.....3

 1.5 Debtor’s Capital Structure3

 1.6 Events Precipitating the Bankruptcy Case.....3

ARTICLE II THE CHAPTER 11 CASE4

 2.1 Overview of Chapter 114

 2.2 Administration of the Chapter 11 Case.....4

ARTICLE III CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS7

 3.1 Introduction.....7

 3.2 Voting; Acceptance by Impaired Classes8

 3.3 Cramdown.....8

 3.4 Administrative Claims8

 3.5 Priority Tax Claims8

 3.6 Priority Claims8

 3.7 Other Secured Claims9

 3.8 Prepetition Lenders Secured Claims.....9

 3.9 General Unsecured Claims9

 3.10 Interests10

 3.11 Summary of Proposed Distributions Under the Plan.....10

ARTICLE IV MEANS FOR IMPLEMENTATION OF THE PLAN.....10

 4.1 Sale of the Acquired Assets.....10

 4.2 Other Assets10

 4.3 Operations Between Confirmation Date and Effective Date10

 4.4 The Liquidating Trust11

 4.5 Cancellation of Interests13

 4.6 Termination of Status; Officers and Directors13

 4.7 Distribution Procedures13

 4.8 Preservation of Rights of Action.....14

 4.9 Effectuating Documents; Further Transactions15

 4.10 Exemption from Certain Transfer Taxes.....15

 4.11 Closing of the Debtor’s Chapter 11 Case.....15

ARTICLE V 15

THE SOLICITATION; VOTING PROCEDURES15

 5.1 Solicitation Package.....15

 5.2 Voting Instructions16

 5.3 Voting Tabulation17

 5.4 Agreements upon Furnishing Ballots.....17

ARTICLE VI FEASIBILITY, BEST INTEREST OF THE CREDITORS AND LIQUIDATION.....18

6.1 Feasibility of the Plan18

6.2 Best Interest of Creditors Test.....18

ARTICLE VII CONFIRMATION PROCEDURES19

7.1 The Confirmation Hearing.....19

7.2 Statutory Requirements for Confirmation of the Plan19

7.3 Identity of Persons to Contact for More Information22

ARTICLE VIII CERTAIN RISK FACTORS AFFECTING THE DEBTOR22

8.1 Certain Bankruptcy Law Considerations22

ARTICLE IX ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN22

9.1 Liquidation Under Chapter 723

9.2 Alternative Plan24

ARTICLE X EXECUTORY CONTRACTS, UNEXPIRED LEASES, AND OTHER AGREEMENTS.....24

10.1 Assumption/Rejection.....24

10.2 Claims Based on Rejection of Executory Contracts and Unexpired Leases 24

10.3 Insurance Policies24

10.4 Reservation of Rights.....25

10.5 Nonoccurrence of Effective Date.....25

ARTICLE XI PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS.....25

11.1 Objections to Claims.....25

11.2 Objection Deadline25

11.3 Estimation of Claims.....25

11.4 No Distributions Pending Allowance.....26

11.5 Distributions After Allowance26

11.6 Reduction of Claims26

11.7 Compliance with Tax Requirements/Allocations26

ARTICLE XII CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN.....27

12.1 Conditions Precedent to Confirmation.....27

12.2 Conditions Precedent to Effective Date27

12.3 Substantial Consummation28

12.4 Waiver of Conditions28

12.5 Revocation, Withdrawal, or Non-consummation.....28

ARTICLE XIII AMENDMENTS AND MODIFICATIONS28

ARTICLE XIV RETENTION OF JURISDICTION29

ARTICLE XV COMPROMISES AND SETTLEMENTS30

ARTICLE XVI MISCELLANEOUS PROVISIONS31

 16.1 Bar Dates for Certain Actions31

 16.2 Severability of Plan Provisions32

 16.3 Successors and Assigns32

 16.4 Releases32

 16.5 Exculpation33

 16.6 Indemnification34

 16.7 Permanent Injunction34

 16.8 Bankruptcy Rule 3016 Compliance35

 16.9 Term of Injunctions or Stay35

 16.10 Integral to Plan35

 16.11 Preservation of Rights of Action; Settlement35

 16.12 Binding Effect35

 16.13 Notices35

 16.14 Setoffs/Counterclaims36

 16.15 Recoupment37

 16.16 Release of Liens37

 16.17 Request for Expedited Tax Review37

 16.18 No Admissions37

 16.19 Governing Law37

ARTICLE XVII CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE
 PLAN38

 17.1 Certain Material U.S. Federal Income Tax Consequences of the Plan38

 17.2 Consequences to U.S. Holders of Certain Claims39

 17.3 Tax Treatment of Liquidating Trust and Its Beneficial Holders41

 17.4 Tax Reporting for Assets Allocable to Disputed Claims and
 Distributions from the Liquidating Trust Disputed Claims Reserve43

 17.5 Information Reporting and Withholding44

 17.6 Importance of Obtaining Professional Tax Assistance44

ARTICLE XVIII CONCLUSION AND RECOMMENDATION44

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Name</u>
A	Plan of Liquidation
B	Liquidation Analysis
C	Payments/Transfers to Creditors within 90 Days (or One Year for Insiders)

SUMMARY OF PLAN

On October 18, 2017, the Debtor filed its First Amended Chapter 11 Plan of Liquidation for Trinity River Resources, LP¹ which proposes to distribute the Debtor's assets, including proceeds from the sale of substantially all of its oil and gas assets, to its creditors and establish a trust to liquidate the Debtor's remaining assets, wind-down its affairs and pursue various Causes of Action. Pursuant to the terms of the Plan and the Liquidating Trust Agreement, a Liquidating Trustee will distribute the net proceeds of the sale of substantially all oil and gas assets, as well the proceeds from all Other Assets to Creditors in order of the priority of their Claims.

Under the Plan, all Allowed Administrative Claims, all Allowed Priority Tax Claims, and all Priority Claims shall be paid in full on or promptly after the Effective Date. Holders of Other Secured Claims will either: (i) be paid up to the extent of such Other Secured Claim; or (ii) receive their collateral, without representation of warranty. The Allowed Prepetition Lenders Secured Claims will be paid from the cash proceeds of the sale of the Prepetition Lenders' collateral less a certain Liquidating Trust Contribution (which includes a litigation advance to fund further investigation and pursuit of various Causes of Action). General Unsecured Claims will receive their pro rata share of the Liquidating Trust Assets after payment of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Other Secured Claims and repayment of the Prepetition Lenders Advance Amount. Holders of Allowed Interests against the Debtor shall be cancelled and extinguished, and the holders of Interests shall not receive or retain any property or assets on account of their Interests.

ARTICLE I BACKGROUND

1.1 Introduction

Trinity River Resources, LP, a Texas limited partnership, and the debtor in the above-captioned Chapter 11 Case (the "Debtor") submits the following Disclosure Statement pursuant to Bankruptcy Code section 1125 for the purpose of soliciting votes to accept or reject the Debtor's Plan. A copy of the Plan is attached hereto as **Exhibit A**. The Disclosure Statement describes certain aspects of the Plan, including the treatment of holders of Claims and Interests, and also describes certain aspects of the Debtor's operations, financial projections, and other related matters.

On the Petition Date, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. Pursuant to Bankruptcy Code sections 1107 and 1108, the Debtor is continuing to operate its business and manage its properties as debtor in possession in this Chapter 11 Case.

¹ Capitalized terms used in this Disclosure Statement and not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

1.2 Sources of Information

THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECTED TO A CERTIFIED AUDIT AND IS BASED, IN PART, UPON INFORMATION PREPARED BY PARTIES OTHER THAN THE DEBTOR. THEREFORE, ALTHOUGH THE DEBTOR HAS MADE EVERY REASONABLE EFFORT TO BE ACCURATE IN ALL MATERIAL MATTERS, THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT ALL THE INFORMATION CONTAINED HEREIN IS COMPLETELY ACCURATE.

Except as otherwise expressly indicated, the portions of this Disclosure Statement describing the Debtor, its business, properties and management, and the Plan, have been prepared from information furnished by the Debtor.

Certain of the materials contained in this Disclosure Statement are taken directly from other readily accessible documents or are digests of other documents. While the Debtor has made every effort to retain the meaning of such other documents or portions that have been summarized, the Debtor urges that any reliance on the contents of such other documents should depend on a thorough review of the documents themselves. In the event of a discrepancy between this Disclosure Statement and the actual terms of a document, the actual terms of such document shall apply.

The authors of the Disclosure Statement have compiled information from the Debtor without professional comment, opinion or verification and do not suggest comprehensive treatment has been given to matters identified herein. Each holder of a Claim and/or Interest is urged to independently investigate any such matters prior to reliance.

No statements concerning the Debtor, the value of its property, or the value of any benefit offered to the Holder of a Claim or Interest in connection with the Plan should be relied upon other than as set forth in this Disclosure Statement. In arriving at your decision, you should not rely on any representation or inducement made to secure your acceptance or rejection that is contrary to information contained in this Disclosure Statement, and any such additional representations or inducements should be reported to counsel for the Debtor, Bracewell LLP, 711 Louisiana Street, Suite 2300, Houston, Texas 77002, Attention: William A. (Trey) Wood III.

1.3 Description of Debtor's Business and Assets

The Debtor was established in 2010 as an oil and gas exploration and production company with a focus on East Texas working interests. As of the Petition Date, the Debtor owned approximately 63,000 net acres in the established Woodbine sands and Austin Chalk formations throughout Polk, Tyler, and Jasper counties.

The Debtor's net production as of the Petition Date was approximately 3,000 boe/d comprised of 43.5% oil and 56.5% rich gas from approximately 164 wells (27 vertical Woodbine wells and 137 horizontal Austin Chalk wells). The Debtor's working interests were primarily operated by its non-debtor affiliate, BBX Operating, LLC.

As further described herein, the Debtor sold substantially all of its assets, including its East Texas working interests, to East Chalk Holdings II LLC, pursuant to Bankruptcy Court order dated September 20, 2017. The sale closed on September 27, 2017.

1.4 Debtor's Corporate Structure

The Debtor is a Texas Limited Partnership. Its general partner is Trinity River Resources, GP, LLC.

1.5 Debtor's Capital Structure

The Debtor was justly and lawfully indebted and liable, without defense, counterclaim, or offset of any kind, with respect to all obligations (the "Pre-Petition Obligations") owing pursuant to (a) the First Amended and Restated Credit Agreement dated as of March 26, 2014 among the Debtor, GE Capital EFS Financing, Inc., as Administrative Agent and Collateral Agent ("Agent") as LC Issuer for such lenders (the "Lenders"), as amended by Bridge Agreement dated December 31, 2015, Letter Agreement dated February 2, 2016, and Supplement to Bridge Agreement dated February 2, 2016 (as so amended and as the same may be further amended, restated, supplemented or otherwise modified from time to time, the "Pre-Petition Credit Agreement"); and (b) the other documents executed in connection therewith, including, without limitation, any note, mortgages, letter of credit documents, security agreements, guaranty agreements, deposit account control agreements, security interests, hedge contracts, or any other agreements or instruments executed by the Debtor, any guarantor of the Debtor, or any subsidiary of the Debtor (collectively, the "Pre-Petition Security Documents").

Pursuant to the Pre-Petition Credit Agreement and the Pre-Petition Security Documents (collectively, the "Pre-Petition Loan Documents"), the Agent and the Lenders made certain loans, advances, and other financial accommodations and provided letters of credit to the Debtor to fund, among other things, the Debtor's operations.

1.6 Events Precipitating the Bankruptcy Case

With the precipitous drop in commodity prices in late 2014 and early 2015, the Prepetition Lenders informed the Debtor in the spring of 2015 that, pursuant to a redetermination under the Credit Facility, the Debtor's borrowing base was reduced to \$105,000,000. At the time, the Debtor had drawn approximately \$124,000,000 under the Credit Facility.

Subsequent to the borrowing base redetermination, the Debtor began to explore alternatives for refinancing the Credit Facility and restructuring its balance sheet. After a number of months during which these attempts proved unsuccessful, the Prepetition Lenders began exercising its default remedies, including acceleration of indebtedness, exercising control over the Debtor's bank accounts, and posting the Debtor's assets for foreclosure. Prior to a scheduled January 2016, foreclosure sale, the Debtor and the Prepetition Lenders entered into a bridge agreement pursuant to which, among other things, the Debtor agreed to retain a sales agent (Robert Urquhart of Scotiabank) to market and sell the Debtor's assets. The Debtor ran the marketing and sale process from January 4, 2016 to March 31, 2016. On March 31, 2016, the Debtor received 14 initial bids from interested parties. The Debtor filed for bankruptcy so that it could complete the sales process.

ARTICLE II THE CHAPTER 11 CASE

2.1 Overview of Chapter 11

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Chapter 11 authorizes a debtor to reorganize its business for the benefit of its creditors, equity interest holders, and other parties in interest. Commencing a chapter 11 case creates an estate that comprises all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a “debtor in possession.”

The principal objective of a chapter 11 case is to consummate a plan. A plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan by a bankruptcy court binds a debtor, any issuer of securities thereunder, any person acquiring property under the plan, any creditor or equity interest holder of a debtor, and any other person or entity the bankruptcy court may find to be bound by such plan. Chapter 11 requires that a plan treat similarly situated creditors and similarly situated equity interest holders equally, subject to the priority provisions of the Bankruptcy Code.

Prior to soliciting acceptances of a proposed plan, Bankruptcy Code section 1125 requires a debtor to prepare a disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance of the plan. This Disclosure Statement is submitted in accordance with Bankruptcy Code section 1125.

2.2 Administration of the Chapter 11 Case

2.2.1 *First-day Motions*

On the Petition Date, or soon thereafter, the Debtor filed numerous first-day motions, the object of which was to streamline the transition to operating under chapter 11, to stabilize operations, and to preserve its relationships with vendors, customers, employees and utility providers. These first-day motions requested, among other things, authority to pay prepetition taxes, pay prepetition wages, remit payments to royalty and working interest owners, and use cash collateral to fund operations. The Debtor also filed motions seeking relief from certain administrative requirements of the Bankruptcy Code and to establish procedures to resolve adequate assurance requests for its utility accounts.

2.2.2 *Cash Collateral Motion*

In exchange for the Debtor’s agreement to file for bankruptcy, the Prepetition Lenders consented to the use of cash collateral on an interim basis and negotiated a 13 week cash collateral DIP financing budget to allow the Debtor sufficient time to complete the sale process. The Debtor and the Prepetition Lenders agreed to several extensions of the budget until reaching agreement on a final budget and order, which was approved on October 25, 2016 [Dkt. No. 187], and subsequently extended by stipulation on January 25, 2017 [Dkt. No. 218].

2.2.3 *Retention of Professionals*

Pursuant to Court order, the Debtor has retained Bracewell LLP, as its general bankruptcy and restructuring counsel, Conway MacKenzie as its restructuring advisor, and Scotia Waterous as its financial advisor. Further, the Debtor has retained Sidley Austin LLP as special counsel to advise and assist the Debtor in handling any issues and/or claims involving the Debtor's Insiders and Affiliates, including, without limitation, an investigation of potential claims against the Insiders and Affiliates relating to the prepetition management of the Debtor and transactions among the Debtor and the Insiders and Affiliates.

As of the date hereof, the Debtor estimates that, as of the Effective Date, the total amount of Allowed Administrative Expense Claims will be approximately [\$625,000]. The Debtor further estimates that approximately [\$400,000] of the total amount of Allowed Administrative Expense Claims will consist of unpaid Professional Fees and the remaining [\$225,000] will constitute unpaid cure costs.

2.2.4 *Retention of Independent Manager*

On July 8, 2016, the Prepetition Lenders filed its *Motion to Appoint Chapter 11 Trustee* [Dkt. No. 91]. On September 1, 2016, the Court entered the *Order Authorizing the Debtor to Employ and retain Independent Manager* [Dkt. No. 141] (the "Independent Manager Order"), which, among other things, authorized the Debtor to employ and retain Mr. John T. Young, Jr. as the Debtor's independent manager (the "Independent Manager"). Mr. Young is a Senior Managing Director of Conway MacKenzie. Additionally, pursuant to the Independent Manager Order, the Prepetition Lenders agreed to withdraw its *Motion to Appoint Chapter 11 Trustee* without prejudice [Dkt. No. 145].

2.2.5 *The Bidding Procedures, Sale Motion and Sale of Substantially All Assets*

On March 10, 2017 the Debtor filed its *Motion for (A) Entry of an Order (I) Approving Bidding Procedures, (II) Scheduling Bidding Deadlines, Auction Date, and Sale Hearing Date; (III) Approving Form and Notice Thereof; (B) Entry of an Order After the Sale Hearing (I) Authorizing the Debtor to Sell Its Assets; and (II) Authorizing the Debtor to Assume and Assign Certain Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* [Dkt. No. # 242] (the "Sale Motion"), which, among other things, sought an entry of an order: (i) approving bidding procedures (the "Bidding Procedures") in connection with the sale of the Debtor's Assets; and (ii) scheduling bid deadlines, a sale objection deadline, an auction date, and a sale hearing date. On May 25, 2017, the Court entered the *Order Approving Bidding Procedures; Scheduling Bidding Deadlines, Auction Date, and Sale Hearing Date; Approving Form and Notice Thereof* [Dkt. No. 320].

Pursuant to the Bidding Procedures, Scotia Waterous initiated a public marketing campaign for the Debtor's assets. The Debtor eventually received fourteen initial bids that were determined to be "Qualifying Bids" and then selected nine "Second Round Bids," one of which, the East Chalk Holdings II LLC bid, was selected as a stalking horse bid. Subsequent to the Debtor's notice of selection of the Stalking Horse Bidder (Dkt. Nos. 375 and 376), no other Second Round Bidder

submitted an additional qualifying bid in excess of the bid of the Stalking Horse Bidder. Accordingly, the Stalking Horse Bidder was selected as the winning bidder and no auction was held.

The Bankruptcy Court entered the Sale Order on September 20, 2017, and the sale to East Chalk Holdings II LLC closed on September 27, 2017. As a result of the sale, the Debtor received \$48,775,791.22 of aggregate gross proceeds.

2.2.6 Preference and Other Potential Avoidance Actions

The Bankruptcy Code preserves the Debtor's right to prosecute claims and causes of action which exist outside of bankruptcy, and also empowers the Debtor to prosecute certain claims which are established by the Bankruptcy Code, including claims to avoid and recover preferential transfers and fraudulent conveyances. As described below, the Plan preserves all of the Debtor's rights in respect of all Causes of Action, transfers the Debtor's rights in respect of such Causes of Action to the Liquidating Trust, and empowers the Liquidating Trustee to prosecute, collect, and/or settle the Causes of Action as deemed appropriate.

On May 5, 2016, the Debtor filed its Bankruptcy Schedules, which includes, among other things, a list of potentially preferential transfers made within the preference period. Those lists of payments are attached hereto as **Exhibit C**. Also, as set forth further below in Section 4.8, the Debtor has conducted a preliminary investigation into potential claims against the Debtor's Insiders and Affiliates relating to the prepetition management of the Debtor and transactions among the Debtor and the Insiders and Affiliates.

IN REVIEWING THIS DISCLOSURE STATEMENT AND THE PLAN, AND IN DETERMINING WHETHER TO VOTE IN FAVOR OF OR AGAINST THE PLAN, HOLDERS OF CLAIMS AND INTERESTS (INCLUDING PARTIES THAT RECEIVED PAYMENTS FROM THE DEBTOR WITHIN NINETY (90) DAYS (OR ONE YEAR WITH RESPECT TO INSIDERS) PRIOR TO THE PETITION DATE) AS WELL AS INSIDERS AND AFFILIATES OF THE DEBTORS (INCLUDING THOSE INSIDERS AND AFFILIATES WHO MANAGED OR ENGAGED IN TRANSACTIONS WITH THE DEBTOR) SHOULD CONSIDER THAT A CAUSE OF ACTION MAY EXIST AGAINST THEM, THAT THE PLAN PRESERVES ALL CAUSES OF ACTION, AND THAT THE PLAN AUTHORIZES THE LIQUIDATING TRUSTEE TO PROSECUTE ANY AND ALL SUCH CAUSES OF ACTION.

2.2.7 *Adversary Proceedings*

(a) *Anadarko Title Dispute*

On August 26, 2016, Anadarko E&P Onshore LLC, (“Anadarko”) initiated an adversary proceeding against the Debtor and BBX asserting title claims to certain of the Jasper County Assets. *See* Amended Complaint, Anadarko E&P Onshore LLC, v. Trinity River Resources, L.P., Adv. No. 16-01074-tmd (filed on Jan. 6, 2017) (the “Anadarko Adversary Proceeding”). Specifically, Anadarko alleges, among other things, that it: (1) has a royalty interest in leases for certain drilled wells; (2) holds a back-in to a working interest in certain wells, and (3) is owed over \$9 million from BBX as a result of BBX’s improper failure to remit prior revenue payments (collectively the “Anadarko Title Allegations”).

On July 26, 2017, the Debtor filed its *Motion Pursuant to Sections 105(a), 363(b) and 365 of the Bankruptcy Code and Bankruptcy Rule 9019 for Approval of Anadarko Settlement and Compromise* (Dkt. No. 355), which motion attached a proposed settlement as Exhibit A. The settlement between the Debtor and Anadarko, as attached to the motion, was approved by the Bankruptcy Court on September 5, 2017 (Dkt. No. 387). As part of the settlement, Anadarko’s claims against BBX Operating, LLC were assigned to the Debtor (which claims will be preserved and assigned to the Liquidating Trust to pursue against BBX).

2.2.8 *Exclusivity*

The Debtor had the exclusive right to file a plan in its Chapter 11 Case until March 10, 2017, and the exclusive right to solicit acceptances until May 9, 2017. *See Third Order (A) Extending the Filing Exclusivity Period, (B) Extending the Soliciting Exclusivity Period, and (C) Granting Related Relief* [Dkt. No. 236]. The exclusivity period has now terminated.

ARTICLE III CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

3.1 **Introduction**

The categories of Claims and Interests set forth below classify Claims and Interests for all purposes, including for purposes of voting, Confirmation and distribution pursuant to the Plan and Bankruptcy Code sections 1122 and 1123(a)(1). A Claim or Interest shall be deemed classified in a particular Class only to the extent that it qualifies within the description of such Class, and shall be deemed classified in other Classes to the extent that any portion of such Claim or Interest qualifies within the description of such other Classes. Notwithstanding anything to the contrary in the Plan, a Claim or Interest shall be deemed classified in a Class only to the extent that such Claim or Interest is Allowed and has not been paid, released, or otherwise settled prior to the Effective Date.

All Claims (except for Administrative Claims and Priority Tax Claims, which are not classified pursuant to Bankruptcy Code section 1123(a)(1)) are classified in Section 3.6 through Section 3.11 below.

3.2 Voting; Acceptance by Impaired Classes

Each holder of an Allowed Claim or Interest in an impaired Class (other than a Claim or Interest that will receive no recovery under this Plan) shall be entitled to vote to accept or reject this Plan. Holders of Claims in Classes not impaired under this Plan shall not be entitled to vote to accept or reject this Plan and shall be presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Classes 1 and 2 are not impaired and hence are presumed to have accepted this Plan. Classes 3 and 4 are impaired and therefore are entitled to vote to accept or reject this Plan. Class 5, which comprises the holders of Interests, will receive no recovery, is impaired and each holder of Interests is deemed to have voted to reject this Plan.

3.3 Cramdown

If none of the impaired Classes vote to accept the Plan by the requisite statutory majorities, the Debtor reserves the right to amend the Plan. With respect to Class 5 that is deemed to reject the Plan and any other Class of Claims that rejects the Plan, the Debtors shall request that the Bankruptcy Court confirm the Plan pursuant to Bankruptcy Code § 1129(b).

3.4 Administrative Claims

Except to the extent that any holder of an Allowed Administrative Claim agrees to a less favorable treatment, each holder of an Allowed Administrative Claim shall receive from the Liquidating Trustee, in full satisfaction, release and discharge of and in exchange for such Allowed Administrative Claim the amount of such Allowed Administrative Claim, in Cash, on or as soon as practicable after the later of: (i) the Effective Date; (ii) the date that is fourteen (14) days after the date such Administrative Claim is Allowed; and (iii) such other date as may be agreed upon in writing by the holder of such Administrative Claim and by the Debtor, or, after the Effective Date, the Liquidating Trustee; *provided, however*, that Allowed Administrative Claims representing obligations incurred in the ordinary course of business of the Debtor, if any, shall be paid in full in accordance with the terms and conditions of the particular transactions and any applicable agreements.

3.5 Priority Tax Claims

Except to the extent that any holder of an Allowed Priority Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive from the Liquidating Trustee, in full satisfaction, release, and discharge of and in exchange for such Allowed Priority Tax Claim the amount of such Allowed Priority Tax Claim, in Cash, on or as soon as practicable after the later of: (i) the Effective Date; (ii) the date that is fourteen (14) days after the date such Claim is Allowed; or (iii) such other date as may be agreed upon in writing by the holder of such Claim and the Debtor, or, after the Effective Date, the Liquidating Trustee.

3.6 Priority Claims

Unless the holder of a Priority Claim and the Debtor or, after the Effective Date, the Liquidating Trustee agree to different treatment, each holder of a Priority Claim shall receive, in

full and final satisfaction, settlement, release and discharge of, and in exchange for such Claim, the amount of such Allowed Priority Claim in Cash on or as soon as practicable after the latest of: (i) the Effective Date; (ii) the date that is fourteen (14) days after the date such Claim is Allowed; or (iii) such other date as may be agreed upon in writing by the holder of such Claim.

3.7 Other Secured Claims

Unless the holder of an Other Secured Claim and the Debtor or, after the Effective Date, the Liquidating Trustee agree to different treatment, each holder of an Other Secured Claim shall receive, in full and final satisfaction, settlement, release and discharge of, and in exchange for such Claim, either: (i) the amount of such Allowed Other Secured Claim in Cash on or as soon as practicable after the latest of (a) the Effective Date, (b) the date that is fourteen (14) days after the date such Claim is Allowed, or (c) such other date as may be agreed upon in writing by the holder of such Claim; or (ii) the return of the applicable collateral in satisfaction of the Allowed amount of such Other Secured Claim. Upon satisfaction of such Allowed Claim as set forth herein, the Liens securing such Other Secured Claim shall be deemed released.

3.8 Prepetition Lenders Secured Claims

The Prepetition Lenders Secured Claims shall be deemed Allowed in the aggregate amount of not less than [\$46,473,677]. On the Effective Date, the Agent shall receive, in full and final satisfaction, settlement, release and discharge of, and in exchange for such Allowed Prepetition Lenders Secured Claims, (a) an amount, in Cash, equal to the Sale Proceeds less (i) the Liquidating Trust Contribution and (ii) the amount of any interim distribution of the Sale Proceeds previously given to the Agent and/or Prepetition Lenders (if any) and (b) repayment of the Prepetition Lenders Advance Amount in accordance with Section 7.2.4 of the Plan. The Agent shall distribute the foregoing distribution to the Prepetition Lenders in accordance with the Prepetition Credit Agreement. All adequate protection and other payments made to or for the benefit of the Agent and/or the Prepetition Lenders pursuant to the Final Cash Collateral Order shall be retained by the Agent, Prepetition Lenders, or their advisors, as applicable, without any diminution of the treatment set forth above.

3.9 General Unsecured Claims

Each holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, release and discharge of and in exchange for all of their respective Allowed General Unsecured Claim, on or as soon as reasonably practicable after the Effective Date, their Pro Rata share of the Liquidating Trust Assets remaining after payment of all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Other Secured Claims, the Prepetition Lenders Advance Amount and the reasonable administrative expenses of the Liquidating Trust. For the avoidance of doubt, the Prepetition Lenders Deficiency Claim shall be considered an Allowed General Unsecured Claim and shall be entitled to its Pro Rata share of the Liquidating Trust Assets.

3.10 Interests

On the Effective Date, all Interests shall be cancelled and extinguished, and the holders of Interests shall not receive or retain any property or assets on account of their Interests.

3.11 Summary of Proposed Distributions Under the Plan

The table below summarizes the estimated distributions to be made on account of prepetition Claims and Interests under the Plan.

Class	Type of Claim	Est. Range of Allowed Claims	Est. Percentage of Recovery
1	Priority Claims	\$129,400	100%
2	Other Secured Claims	\$2,500	100%
3	Prepetition Lenders Secured Claims	[\$46,473,677]	[•]%
4	General Unsecured Claims	[\$79,686,900]	[•]%
5	Interests	N/A	0%

**ARTICLE IV
MEANS FOR IMPLEMENTATION OF THE PLAN**

4.1 Sale of the Acquired Assets

The Debtor consummated the sale of the Acquired Assets to Purchaser pursuant to the Purchase Agreement and Sale Order on September 27, 2017.

4.2 Other Assets

On the Effective Date, all Other Assets shall vest in the Liquidating Trust for the benefit of the Holders of General Unsecured Creditors.

4.3 Operations Between Confirmation Date and Effective Date

During the period from the Confirmation Date through and including the Effective Date, the Debtor may continue to operate its business in the ordinary course as a debtor in possession, subject to all applicable orders of the Bankruptcy Court, the Bankruptcy Code and the limitations set forth herein.

4.4 **The Liquidating Trust**

This Section 4.4 is a general description of the Liquidating Trust and its provisions. The Liquidating Trust Agreement shall be included in the Plan Supplement, and must be acceptable to the Prepetition Lenders in form and substance. To the extent this Section 4.4 is inconsistent with the Liquidating Trust Agreement, the Liquidating Trust Agreement shall control for all purposes.

4.4.1 ***Creation of the Liquidating Trust***

On or before the Effective Date, the Debtor shall take all necessary steps to establish the Liquidating Trust for the benefit of the Trust Beneficiaries by the execution and delivery of the Liquidating Trust Agreement.

4.4.2 ***Transfer of the Liquidating Trust Assets***

On the Effective Date, the Liquidating Trust Assets, including, without limitation, the Liquidating Trust Contribution and the Causes of Action, shall be irrevocably transferred to and vest in the Liquidating Trust free and clear of all Liens, Claims, charges and encumbrances. For all U.S. federal income tax purposes, all Persons (including, without limitation, the Debtor and the Liquidating Trustee and the Trust Beneficiaries) shall treat the transfer and assignment of the Liquidating Trust Assets to the Liquidating Trust for the benefit of the Trust Beneficiaries as (a) a transfer of the Liquidating Trust Assets directly to the Trust Beneficiaries followed by (b) the transfer by the Trust Beneficiaries to the Liquidating Trust of the Liquidating Trust Assets. The Liquidating Trust will be treated as a grantor trust for U.S. federal tax purposes and, to the extent permitted under applicable law, for state and local income tax purposes. The Trust Beneficiaries will be treated as the grantors and owners of their Pro Rata (by Class or category of Claim) portion of the Liquidating Trust Assets for U.S. federal income tax purposes. On and after the Effective Date, the Liquidating Trustee may use, acquire and dispose of property and compromise or settle any Claims, without the supervision of or approval by the Bankruptcy Court, and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than the restrictions expressly imposed by this Plan, the Confirmation Order or the Liquidating Trust Agreement.

4.4.3 ***Purpose of the Liquidating Trust***

The Liquidating Trust, duly organized under the laws of Texas, shall be established for the purpose of liquidating and distributing the Liquidating Trust Assets in accordance with Treasury Regulation Section 301.7701-4(d) and shall be governed by the Liquidating Trust Agreement.

4.4.4 ***Administration of the Liquidating Trust; Funding***

The Liquidating Trust shall be administered by the Liquidating Trustee pursuant to the Liquidating Trust Agreement. The administrative costs and expenses of the Liquidating Trust shall be funded by the Liquidating Trust Assets (including, without limitation, the reasonable fees and expenses of the Liquidating Trustee and the reasonable fees and expenses of any professionals employed by the Liquidating Trustee). Additionally, subject to the terms of the Liquidating Trust Agreement and the prior written consent of the Prepetition Lenders, the Liquidating Trust may

borrow against, pledge, hypothecate, otherwise encumber, or convey Liquidating Trust Assets as needed to accomplish the goals of the Liquidating Trust.

The Liquidating Trust Agreement shall provide that the Liquidating Trust Assets shall be used, *first*, to pay Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims and Allowed Other Secured Claims, *second*, to pay the costs in the Wind Down Budget and fund the administration of the Liquidating Trust (including, without limitation, the investigation and prosecution of any of the Causes of Action), *third*, to repay the Prepetition Lenders Advance Amount and, *fourth*, fund distributions to holders of Allowed General Unsecured Claims. For the avoidance of doubt, no distributions shall be made to holders of Allowed General Unsecured Claims until the Prepetition Lenders Advance Amount has been paid in full.

4.4.5 *The Liquidating Trustee*

The Liquidating Trustee shall be John T. Young, Jr. The Liquidating Trustee shall retain and have all the rights, powers and duties necessary to carry out its responsibilities under this Plan and the Liquidating Trust Agreement, and as otherwise provided in the Confirmation Order. The Liquidating Trustee shall be the exclusive trustee of the Liquidating Trust Assets for the purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as a representative of the estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The Liquidating Trustee's liability may be limited by the Liquidating Trust Agreement to include limitations of liability for negligence and any actions except for willful misconduct or fraud.

4.4.6 *Powers and Duties of Liquidating Trustee*

The Liquidating Trustee shall administer the Liquidating Trust Assets in accordance with the Plan and the Liquidating Trust Agreement. The powers of the Liquidating Trustee shall include any and all powers and authority necessary to implement the Plan and the Liquidating Trust Agreement including: (i) serving as the sole officer, director and person in control of the Debtor on and after the Effective Date; (ii) liquidating and/or abandoning any of the Liquidating Trust Assets; (iii) investing Cash; (iv) taking all steps to execute all instruments and documents necessary to effectuate distributions to holders of Allowed Claims in accordance with the Plan including, without limitation, the establishment of any reserves that the Liquidating Trustee deems necessary and/or appropriate; (v) paying Allowed Administrative Claims (including Allowed Professional Fee Claims), Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Other Secured Claims and Allowed General Unsecured Claims in accordance with the Plan; (vi) employing, retaining, terminating or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan and Liquidating Trust Agreement; (vii) paying any and all reasonable fees and expenses of the post-Effective Date Debtor (if any) and any professionals employed by the Liquidating Trustee; (viii) administering and paying taxes, including filing tax returns; (ix) requesting an expedited determination of any unpaid tax liability of the Debtor or post-Effective Date Debtor under Bankruptcy Code § 505; (x) representing the interests of the Debtor or its post-confirmation estate before any taxing authority in all matters, including any action, suit, proceeding or audit; (xi) taking all steps reasonably necessary and practicable to terminate the corporate existence of the Debtor in accordance with the Plan; (xii) having the sole authority to prosecute any of the Causes of Action and having the authority to compromise, settle, resolve, discontinue, abandon or dismiss all such actions without approval of

the Bankruptcy Court; and (xiii) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court, the Plan or the Liquidating Trust Agreement, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan.

4.5 Cancellation of Interests

On the Effective Date, all Interests in the Debtor shall be terminated and extinguished and any certificates or other documents that previously evidenced ownership of those Interests shall be deemed canceled (all without further action by any Person or the Bankruptcy Court) and shall be null and void and such certificates and documents shall evidence no rights or Interests in the Debtor.

4.6 Termination of Status; Officers and Directors

On the Effective Date, except to the extent that the Liquidating Trustee determines otherwise, the Debtor shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtor or payments to be made in connection therewith; provided, however, that the Debtor shall file with the Office of the Secretary of State for the state of its formation, a certificate of dissolution which may be executed by the Liquidating Trustee without the need for further approval or action from any officers, directors, Interest holders of the Debtor or any other party. From and after the Effective Date, the Debtor shall not be required to file any document, or take any other action, or obtain any approval from the Debtor's officers, directors or Interest holders, to withdraw its business operations from any states in which the Debtor previously conducted its business operations.

On the Effective Date: (i) the positions of the current directors, or in the case of a governing body created by a partnership agreement, limited liability company agreement or similar agreement, the members of such governing body (such persons and the corporate directors collectively, the "Governors") of the Debtor shall be eliminated, and each Governor shall be terminated (without the necessity of further action); and (ii) to the fullest extent permitted by applicable law, the rights, powers, and duties of the Governors of the Debtor shall vest in the Liquidating Trustee and the Liquidating Trustee shall be the presiding officer and the sole Governor of the Debtor.

4.7 Distribution Procedures

Any payments or distributions to be made by the Liquidating Trustee to holders of Claims as required by the Plan shall be made only to the holders of Allowed Claims. Any payments or distributions to be made by the Liquidating Trustee pursuant to the Plan shall be made on or about the Effective Date of such Plan, or as soon thereafter as practicable, except as otherwise provided for in the Plan. Any payment, delivery or distribution by the Liquidating Trustee pursuant to the Plan, to the extent delivered by the United States mail, shall be deemed made when deposited by the Liquidating Trustee into the United States mail. Distributions or deliveries required to be made by the Plan on a particular date shall be deemed to have been made on such date if actually made on such date or as soon thereafter as practicable taking into account the need to establish reserves and account for Disputed Claims. No payments or other distributions of property shall be made on account of any Claim or portion thereof unless and until such Claim or portion thereof is

Allowed. The Liquidating Trustee may establish reserves for Disputed Claims, and defer or delay distributions to ensure an equitable and ratable distribution to holders of Allowed Claims, in accordance with the terms of the Plan. The Liquidating Trustee will make no distributions upon a Claim held by a party against whom the Liquidating Trustee asserts any Avoidance Action until resolution of the Avoidance Action by settlement or judgment or as otherwise provided by Bankruptcy Court order.

4.8 Preservation of Rights of Action

Any and all Causes of Action that the Debtor or its estate may hold against any Person, (including without limitation the Telfer Entities) other than any action or claim released pursuant to Article XV of the Plan, shall automatically vest in the Liquidating Trust and Liquidating Trust Assets. The Liquidating Trust, and only the Liquidating Trust, through its authorized agents and representatives may pursue and enforce any and all such Causes of Action. The Liquidating Trust shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

The Causes of Actions preserved and vested in the Liquidating Trust specifically include Causes of Action against the Debtor's Insiders and Affiliates. These Causes of Action include, without limitation, bankruptcy and state law claims to avoid and recover preferential and fraudulent (both actual and constructive) transfers against BBX Operating, LLC, Kodiak Resources, Inc., Border to Border Exploration, LLC, Border to Border #1 LP and Matthew J. Telfer ("Telfer"), claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty and denuding of corporate assets against Telfer and John Gaines, as well as claims for unjust enrichment against Telfer, equitable subordination of the Claims filed by the Affiliates and demands for an accounting against all of the foregoing Insiders and Affiliates. All of these Causes of Action relate to the management of the Debtor by certain of the Insiders and Affiliates and/or transaction among the Debtor and the Insiders and Affiliates. The Debtor's investigation with respect to these matters continues and additional Causes of Action may be identified and pursued against the Insiders and Affiliates.

Any and all claims, causes of action, defenses, and counterclaims of or accruing to the Debtor or its estate related to the Causes of Action shall be transferred to the Liquidating Trust, whether or not litigation relating thereto is pending on the Effective Date, and whether or not any such rights, claims, causes of action, defenses and counterclaims have been listed or referred to in this Plan, the Bankruptcy Schedules or any other document filed with the Bankruptcy Court. The Liquidating Trust does not waive, relinquish, or abandon (nor shall it be estopped or otherwise precluded from asserting) any right, claim, cause of action, defense, or counterclaim that constitutes a Cause of Action: (i) whether or not such right, claim, cause of action, defense, or counterclaim has been listed or referred to in this Plan, the Bankruptcy Schedules or any other document filed with the Bankruptcy Court; (ii) whether or not such right, claim, cause of action, defense, or counterclaim is currently known to the Debtor; and (iii) whether or not a defendant in any litigation relating to such right, claim, cause of action, defense or counterclaim filed a Proof of Claim in the Chapter 11 Case, filed a notice of appearance or any other pleading or notice in the Chapter 11 Case, voted for or against this Plan, or received or retained any consideration under

this Plan. Specifically, additional Causes of Action may be discovered and pursued against the Insiders and Affiliates and additional Causes of Action may also be discovered and pursued against other Insiders and Affiliates and/or subsequent transferees of such Insiders and Affiliates.

Without in any manner limiting the generality of the foregoing, notwithstanding any otherwise applicable principle of law or equity, without limitation, any principles of judicial estoppel, res judicata, collateral estoppel, issue preclusion, or any similar doctrine, the failure to list, disclose, describe, identify, or refer to a right, claim, cause of action, defense, or counterclaim, or potential right, claim, cause of action, defense, or counterclaim, in this Plan, the Bankruptcy Schedules, or any other document filed with the Bankruptcy Court shall in no manner waive, eliminate, modify, release, or alter the Liquidating Trust's right to commence, prosecute, defend against, settle, and realize upon any rights, claims, causes of action, defenses, or counterclaims that is a Cause of Action as of the Effective Date.

4.9 Effectuating Documents; Further Transactions

The Independent Manager or, after the Effective Date, the Liquidating Trustee, shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Independent Manager or, after the Effective Date, the Liquidating Trustee, shall be authorized to certify or attest to any of the foregoing actions.

4.10 Exemption from Certain Transfer Taxes

Pursuant to Bankruptcy Code section 1146(a), the issuance, transfer, or exchange of a security, or the making of delivery of an instrument of transfer, provided under the Plan, from the Debtor to the Liquidating Trustee or any other Person pursuant to the Plan may not be taxed under any law imposing a stamp tax or similar tax, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

4.11 Closing of the Debtor's Chapter 11 Case.

The Liquidating Trustee shall have sole authority to seek to close the Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

ARTICLE V THE SOLICITATION; VOTING PROCEDURES

5.1 Solicitation Package

Accompanying this Disclosure Statement for the purpose of soliciting votes on the Plan are copies of: (i) the Plan; (ii) the notice of, among other things, the time for submitting Ballots to

accept or reject the Plan, the date, time, and place of the hearing to consider Confirmation of the Plan and related matters, and the time for filing objections to Confirmation of the Plan; and, as applicable, (iii) a Ballot (as defined in the Bankruptcy Court's order approving solicitation procedures for the Plan (the "Solicitation Order") [Dkt. No. ___]) or Ballots (and return envelope(s)) that you may use in voting to accept or to reject the Plan); or (iv) a notice of non-voting status, (collectively the "Solicitation Package"). Only Holders eligible to vote in favor of or against the Plan will receive a Ballot(s) as part of their Solicitation Package. If you did not receive a Ballot and believe that you should have, please contact the Debtor's counsel at the address or telephone number set forth in 16.14.

5.2 Voting Instructions

After carefully reviewing the Plan and this Disclosure Statement, and the Exhibits thereto, and the detailed instructions accompanying your Ballot, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed Ballot. Please complete and sign your Ballot and return it in the envelope provided so that it is RECEIVED by the Voting Agent (as defined in the Solicitation Order) on or before the Plan Voting Deadline (as defined in the Solicitation Order) set forth on the Ballot.

Each Ballot has been coded to reflect the Class of Claims it represents. Accordingly, in voting to accept or reject the Plan, you must use only the coded Ballot or Ballots sent to you with this Disclosure Statement.

If you have any questions about the procedure for voting your eligible Claim or with respect to the Solicitation Package that you have received, please contact the Voting Agent:

Bracewell LLP
Attn: Shannon Wolf
CityPlace I, 34th Floor
185 Asylum Street
Hartford, CT 06103.3458
Email: Shannon.Wolf@bracewell.com

IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR VOTE MUST BE ACTUALLY RECEIVED BY THE VOTING AGENT FOR THE DEBTOR ON OR BEFORE [DATE], AT THE ABOVE ADDRESS. EXCEPT TO THE EXTENT ALLOWED BY THE BANKRUPTCY COURT OR DETERMINED OTHERWISE BY THE DEBTOR, BALLOTS RECEIVED AFTER THE PLAN VOTING DEADLINE WILL NOT BE ACCEPTED OR USED IN CONNECTION WITH THE DEBTOR'S REQUEST FOR CONFIRMATION OF THE PLAN OR ANY MODIFICATION THEREOF.

ONLY BALLOTS WITH ORIGINAL SIGNATURES WILL BE COUNTED. BALLOTS WITH COPIED SIGNATURES WILL NOT BE ACCEPTED OR COUNTED. YOU MAY NOT SUBMIT A BALLOT BY FACSIMILE. YOU MAY SUBMIT A BALLOT BY EMAIL TO SHANNON.WOLF@BRACEWELL.COM, BY SCANNING AN ORIGINAL SIGNATURE AND SENDING IN .PDF FORMAT. ONLY ORIGINAL BALLOTS (OR SCANNED ORIGINAL BALLOTS IN THE CASE OF BALLOTS

**SUBMITTED BY EMAIL) RECEIVED BY THE VOTING AGENT BY THE PLAN
VOTING DEADLINE WILL BE COUNTED.**

5.3 Voting Tabulation

Under the Bankruptcy Code, for purposes of determining whether the requisite acceptances have been received, only Holders who actually vote will be counted. The failure of a Holder to deliver a duly executed Ballot will be deemed to constitute an abstention by such Holder with respect to voting on the Plan and such abstentions will not be counted as votes for or against the Plan.

Unless otherwise ordered by the Bankruptcy Court, Ballots that are signed, dated, and timely received, but on which a vote to accept or reject the Plan has not been indicated, will not be counted. The Debtor, in its sole discretion, may request that the Voting Agent attempt to contact such voters to cure any such defects in the Ballots.

Except as provided below, unless the applicable Ballot is timely submitted to the Voting Agent before the Plan Voting Deadline, together with any other documents required by such Ballot, the Debtor may, in its sole discretion, reject such Ballot as invalid and decline to utilize it in connection with seeking Confirmation of the Plan.

A vote may be disregarded if the Bankruptcy Court determines, pursuant to Bankruptcy Code section 1126(e), that it was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or another acting in a fiduciary or representative capacity, such Person should indicate such capacity when signing and, unless otherwise determined by the Debtor, must submit proper evidence satisfactory to the Debtor of authority to so act.

The period during which Ballots with respect to the Plan will be accepted by the Debtor will terminate on the Plan Voting Deadline. Except to the extent permitted by the Bankruptcy Court, Ballots that are received after the Plan Voting Deadline will not be counted or otherwise used by the Debtor in connection with the Debtor's request for Confirmation of the Plan (or any permitted modification thereof). **IN NO CASE SHOULD A BALLOT BE DELIVERED TO ANY ENTITY OTHER THAN THE VOTING AGENT.**

5.4 Agreements upon Furnishing Ballots

The delivery of an accepting Ballot to the Voting Agent by a Holder pursuant to one of the procedures set forth above will constitute the agreement of such Holder to accept: (i) all of the terms of, and conditions to, the solicitation and voting procedures approved by the Bankruptcy Court and (ii) the terms of the Plan; provided, however, all parties in interest retain their right to object to Confirmation of the Plan pursuant to Bankruptcy Code section 1128.

**ARTICLE VI
FEASIBILITY, BEST INTEREST OF THE CREDITORS
AND LIQUIDATION**

6.1 Feasibility of the Plan

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan. The Plan proposed by the Debtor provides for a liquidation of the Debtor's remaining assets and a distribution of Cash to creditors in accordance with the priority scheme of the Bankruptcy Code and the terms of the Plan. The ability of the Liquidating Trustee to make the Distributions described in the Plan does not depend on future earnings of the Debtor. Accordingly, the Debtor believes that the Plan is feasible and meets the requirements of section 1129(a)(11) of the Bankruptcy Code.

6.2 Best Interest of Creditors Test

Before the Plan may be confirmed, the Bankruptcy Court must find (with certain exceptions) that the Plan provides, with respect to each Class, that each Holder of a Claim or interest in such Class either: (i) has accepted the Plan; or (ii) will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount that such person would receive or retain if the Debtor liquidated under chapter 7 of the Bankruptcy Code. In chapter 7 liquidation cases, unsecured creditors and interest holders of a debtor are paid from available assets generally in the following order, with no junior Class receiving any payments until all amounts due to senior Classes have been paid fully or any such payment is provided for:

- Secured creditors (to the extent of the value of their collateral);
- Administrative and other priority creditors;
- Unsecured creditors;
- Debt expressly subordinated by its terms or by order of the Bankruptcy Court; and
- Interest holders.

As described in the liquidation discussion set forth in 9.1 hereof, the Debtor believes that the value of any distributions in a chapter 7 case would be less than the value of distributions under the Plan because, among other reasons, distributions in a chapter 7 case may not occur for a longer period of time, thereby reducing the present value of such distributions. In this regard, the distribution of the proceeds of a liquidation would be delayed until a chapter 7 trustee and its professionals became knowledgeable about the Chapter 11 Case and the Claims against the Debtor. In addition, proceeds received in a chapter 7 liquidation are likely to be significantly discounted due to the distressed nature of the sale, and the Debtor's estate would have to pay the fees and expenses of a chapter 7 trustee in addition to the Professionals' pre- conversion fees and expenses (thereby further reducing cash available for distribution).

ARTICLE VII CONFIRMATION PROCEDURES

7.1 The Confirmation Hearing

Bankruptcy Code section 1128(a) requires the Bankruptcy Court, after notice, to hold a Confirmation hearing (the “Confirmation Hearing”). Bankruptcy Code section 1128(b) provides that any party in interest may object to Confirmation of the Plan.

The Bankruptcy Court has scheduled the Confirmation Hearing for [#], at [#] a.m., prevailing Central Time, before the Honorable Tony M. Davis, United States Bankruptcy Judge, United States Bankruptcy Court for the Western District of Texas at the Homer J. Thornberry Federal Judicial Bldg., 903 San Jacinto Blvd., Suite 326, Austin, Texas 78701.

Objections to Confirmation of the Plan must be filed and served on the Debtor and the other parties set forth in the order approving the Disclosure Statement, and certain other parties, by no later than [DATE], in accordance with the order approving the Disclosure Statement. THE BANKRUPTCY COURT MAY NOT CONSIDER OBJECTIONS TO CONFIRMATION OF THE PLAN IF ANY SUCH OBJECTIONS HAVE NOT BEEN TIMELY SERVED AND FILED IN COMPLIANCE WITH THE ORDER APPROVING THE DISCLOSURE STATEMENT.

The notice of the Confirmation Hearing will contain, among other things, the deadline to object to Confirmation of the Plan, the Plan Voting Deadline, and the date and time of the Confirmation Hearing.

7.2 Statutory Requirements for Confirmation of the Plan

At the Confirmation Hearing, the Bankruptcy Court shall determine whether the requirements of Bankruptcy Code section 1129 have been satisfied. The Debtor believes that the Plan satisfies or will satisfy the applicable requirements, as follows:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtor, as Plan proponent, has or will have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to the case, has been disclosed to the Bankruptcy Court, and any such payment: (i) made before the Confirmation of the Plan is reasonable; or (ii) is subject to the approval of the Bankruptcy Court as reasonable if it is to be fixed after the Confirmation of the Plan.
- The Debtor, as Plan proponent, has disclosed the identity and affiliations of any individual proposed to serve, after Confirmation of the Plan, as a director, officer, or voting trustee of the Debtor, an Affiliate of the Debtor participating in the Plan

with the Debtor, or a successor to the Debtor under the Plan, and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and equity security holders and with public policy.

- The Debtor, as Plan proponent, has disclosed the identity of any insider (as defined in Bankruptcy Code section 101) that will be employed or retained by the Liquidating Trust, and the nature of any compensation for such insider.
- The Plan does not propose any rate change that is subject to approval by a governmental regulatory commission.
- Either each Holder of an impaired Claim or Interest has accepted the Plan, or will receive or retain under the Plan on account of that Claim or Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that the Holder would receive or retain if the Debtor was liquidated on that date under chapter 7 of the Bankruptcy Code.
- Each Class of Claims that is entitled to vote on the Plan has either accepted the Plan or is not impaired under the Plan, or the Plan can be confirmed without the approval of each voting Class pursuant to Bankruptcy Code section 1129(b).
- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Administrative Claims, Priority Tax Claims and, Priority Claims will be paid in full, in Cash, on the Effective Date, or as soon thereafter as practicable.
- At least one Class of impaired Claims will accept the Plan, determined without including any acceptance of the Plan by any insider holding a Claim of that Class.
- Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successors thereto under the Plan unless such a liquidation or reorganization is proposed in the Plan.
- All fees of the type described in 28 U.S.C. § 1930, including the fees of the United States Trustee, will be paid as of the Effective Date.
- The Debtor has no retirement benefit obligations except for 401(k) plans, and such plans are expected to be terminated and will provide for rollover distributions to current participants.

The Debtor believes that: (i) the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code; (ii) the Debtor has complied or will have complied with all of the requirements of chapter 11; and (iii) the Plan has been proposed in good faith.

7.2.1 *Acceptance by Impaired Classes*

The Bankruptcy Code requires, as a condition to Confirmation, that, except as described in the following section, each Class of Claims or Interests that is impaired under the Plan accept the Plan. A class that is not impaired under a plan of reorganization or liquidation is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. A class is impaired unless the plan: (i) leaves unaltered the legal, equitable and contractual rights to which the claim or interest entitles the holder of that claim or equity interest; or (ii) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest after the occurrence of a default—(a) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of this title or of a kind that section 365(b)(2) expressly does not require to be cured; (b) reinstates the maturity of such claim or interest as such maturity existed before such default; (c) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and (d) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and (e) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

7.2.2 *Confirmation Without Acceptance by All Impaired Classes*

Bankruptcy Code section 1129(b) allows a bankruptcy court to confirm a plan, even if an impaired class entitled to vote on the plan has not accepted it, provided that the plan has been accepted by at least one impaired Class. Holders of Allowed Class 5 Interests are deemed to reject the Plan. The Debtor cannot guarantee that other impaired Classes will accept the Plan. If any impaired Class does not accept the Plan, the Debtor intends to seek confirmation of the Plan pursuant to Bankruptcy Code section 1129(b). Bankruptcy Code section 1129(b) states that, notwithstanding an impaired class's failure to accept a plan of reorganization or liquidation, the plan shall be confirmed, at the plan proponent's request, in a procedure commonly known as "cram down," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each class of claims or equity interests that is impaired under, and has not accepted, the plan.

The condition that a plan be "fair and equitable" with respect to a non-accepting class of secured creditors includes the following requirements that either: (i) the plan provides that holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims and that each holder of a claim of such class receive on account of such claims deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property; (ii) the plan provides for the sale, subject to 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under (i) or (iii) of this paragraph; or (iii) the plan provides for the realization by such holders of the indubitable equivalent of such claims.

The condition that a plan be “fair and equitable” with respect to a non-accepting class of unsecured claims includes the following requirement that either: (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (ii) the holder of any claim or equity interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or equity interest any property.

The Debtor reserves the right to alter, amend, modify, revoke or withdraw the Plan or any Exhibit or Schedule, including to amend or modify it to satisfy Bankruptcy Code section 1129(b), if necessary.

7.3 Identity of Persons to Contact for More Information

Any interested party desiring further information about the Plan should contact the Voting Agent at the phone number and/or address listed in Section 5.2 of this Disclosure Statement.

ARTICLE VIII CERTAIN RISK FACTORS AFFECTING THE DEBTOR

PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS OF IMPAIRED CLAIMS SHOULD READ AND CAREFULLY CONSIDER THE FACTORS SET FORTH BELOW, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT. THESE FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

8.1 Certain Bankruptcy Law Considerations

Although the Debtor believes that the Plan will satisfy all requirements necessary for Confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications to the Plan will not be required for Confirmation or that such modifications would not necessitate the re-solicitation of votes. Although the Debtor believes that the Effective Date will occur soon after the Confirmation Date, there can be no assurance as to such timing. In the event the conditions precedent to Confirmation of the Plan have not been satisfied or waived (to the extent possible) by the Debtor or applicable party (as provided in the Plan) as of the Effective Date, then the Confirmation Order will be vacated, no distributions under the Plan will be made, and the Debtor and all Holders of Claims and Interests will be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though such Confirmation Date had never occurred.

ARTICLE IX ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

If the Plan is not confirmed and consummated, the alternatives to the Plan include: (i) liquidation of the Debtor under chapter 7 of the Bankruptcy Code; and (ii) an alternative plan.

9.1 Liquidation Under Chapter 7

If no plan can be confirmed, the Debtor's Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed (or elected) to liquidate the Debtor's assets for distribution in accordance with the priorities established by the Bankruptcy Code. The Debtor believes that liquidation under chapter 7 would result in smaller distributions to creditors than those provided for in the Plan because: (i) additional administrative expenses involved in the appointment of a trustee would be incurred; and (ii) additional expenses and claims, some of which would be entitled to priority, might be generated during the liquidation. Specifically, the Debtor's costs of liquidation under chapter 7 of the Bankruptcy Code would include the fees payable to a chapter 7 trustee, as well as those fees that might be payable to attorneys and other professionals that such a trustee might engage. The foregoing types of claims and other claims that might arise in a liquidation case or result from the pending Chapter 11 Case, including any unpaid expenses incurred by the Debtor during the Chapter 11 Case such as compensation for attorneys, financial advisors and accountants, would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay prepetition Allowed General Unsecured Claims or Allowed Interests.

To determine if the Plan is in the best interests of each impaired Class, the value of the distributions from the proceeds of a liquidation of the Debtor's unencumbered assets and properties, after subtracting the amounts attributable to the foregoing claims and expenses, are then compared with the value of the property offered to such Classes of Claims and Interests under the Plan.

After considering the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to the holders of Claims and Interests in the Chapter 11 Case, including: (i) the increased costs and expenses of a liquidation under chapter 7 of the Bankruptcy Code arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee; (ii) the likely erosion in value of the Debtor's remaining assets in a chapter 7 case in the context of an expeditious liquidation of and the "forced sale" atmosphere that would prevail under a chapter 7 liquidation; and (iii) the substantial increases in Claims which would be satisfied on a priority basis or on parity with creditors in the Chapter 11 Case, the Debtor has determined that Confirmation of the Plan will provide each holder of an Allowed Claim or Interest with a recovery that is not less than such holder would receive pursuant to a liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

The Debtor's Liquidation Analysis is attached hereto as **Exhibit B**. The information set forth in **Exhibit B** provides a summary of the liquidation values of the Debtor's assets, assuming a chapter 7 liquidation in which a trustee appointed by the Bankruptcy Court would liquidate the assets of the Debtor's Estate. The liquidation analysis was prepared by the Debtor's financial advisor.

Underlying the liquidation analysis are a number of estimates and assumptions that, although developed and considered reasonable by management, are inherently subject to significant economic and competitive uncertainties and contingencies beyond the control of the Debtor and its management. The liquidation analysis is also based on assumptions with regard to liquidation decisions that are subject to change. Accordingly, the values reflected might not be

realized if the Debtor were, in fact, to undergo such a liquidation. The chapter 7 liquidation period is assumed to be a period of six (6) months, allowing for, among other things, the: (i) the sale of Debtor's remaining assets; (ii) the wind-down of the Debtor's affairs by a newly appointed person unfamiliar with the Debtor's affairs; and (iii) collection of receivables.

9.2 Alternative Plan

If the Plan is not confirmed, the Bankruptcy Court could confirm a different plan. The Debtor believes that the Plan, as described herein, enables holders of Claims and Interests to realize the highest and best value under the circumstances. The Debtor believes that any alternative form of chapter 11 plan is a much less attractive alternative to creditors than the Plan because of the greater returns and certainty provided by the Plan. Other alternatives could involve diminished recoveries, significant delay, uncertainty, and substantial additional administrative costs.

ARTICLE X

EXECUTORY CONTRACTS, UNEXPIRED LEASES, AND OTHER AGREEMENTS

10.1 Assumption/Rejection

On the Effective Date, all of the Debtor's executory contracts and unexpired leases not previously assumed will be rejected.

10.2 Claims Based on Rejection of Executory Contracts and Unexpired Leases

Unless otherwise provided by a Bankruptcy Court order, any Proofs of Claim asserting Claims arising from the rejection of the Debtor's executory contracts and unexpired leases pursuant to the Plan or otherwise must be filed no later than thirty (30) days after the later of the Effective Date or the effective date of rejection. Any Proofs of Claim arising from the rejection of the Debtor's executory contracts or unexpired leases that are not timely filed shall be disallowed automatically, forever barred from assertion, and shall not be enforceable against any Debtor or the Liquidating Trustee without the need for any objection by any Person or further notice to or action, order, or approval of the Bankruptcy Court, and any Claim arising out of the rejection of the executory contract or unexpired lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Bankruptcy Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Debtor's executory contracts and unexpired leases shall be classified as General Unsecured Claims and shall be treated in accordance with the particular provisions of the Plan.

10.3 Insurance Policies

Notwithstanding anything to the contrary herein, all insurance policies to which the Debtor has any rights as of the date of the Confirmation Order shall be deemed and treated as executory contracts assumed and assigned to the Liquidating Trust to the extent such policies are determined to be executory contracts. The Liquidating Trustee may purchase extensions or tails on any such insurance policies.

10.4 Reservation of Rights

Nothing contained in the Plan shall constitute an admission by the Debtor that any contract or lease is in fact an executory contract or unexpired lease or that the Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Liquidating Trustee shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

10.5 Nonoccurrence of Effective Date

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request by the Debtor to extend the deadline for assuming or rejecting unexpired leases pursuant to Bankruptcy Code section 365(d)(4).

ARTICLE XI PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS

11.1 Objections to Claims

After the Effective Date, the Liquidating Trustee shall have the exclusive authority to file objections to all Claims, and the exclusive authority to settle, compromise, or litigate to judgment any objections to Claims that he or she files. Subject to the terms of the Liquidating Trust Agreement, the Liquidating Trustee may settle or compromise any Disputed Claim without approval of the Bankruptcy Court.

11.2 Objection Deadline

As soon as practicable, but no later than the Claims Objection Deadline, the Liquidating Trustee may file objections to Claims with the Bankruptcy Court and serve such objections on the holders of the Claims to which such objections are made. Nothing contained herein, however, shall limit the right of the Liquidating Trustee to object to Claims, if any, filed or amended after the Claims Objection Deadline. The Claims Objection Deadline may be extended by the Bankruptcy Court upon motion by the Debtor or Liquidating Trustee, without notice or hearing.

For the avoidance of doubt, no Claim is or shall be deemed Allowed until the later of the Claims Objection Deadline of the expiration of some other applicable period of limitation fixed by the Bankruptcy Code, Bankruptcy Rules, or Bankruptcy Court, unless otherwise ordered by a Final Order of the Bankruptcy Court or Allowed pursuant to this Plan.

11.3 Estimation of Claims

The Liquidating Trustee may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Bankruptcy Code section 502(c), regardless of whether the Liquidating Trustee or the Debtor has previously objected to such Claim or whether the Bankruptcy Court has ruled on any objection, and the Bankruptcy Court will retain jurisdiction

to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal related to any such objection. In the event the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount will 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 such Claim, the Liquidating Trustee may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned objection, estimation and resolution procedures are cumulative and are not necessarily exclusive of one another.

11.4 No Distributions Pending Allowance

Notwithstanding any provision in this Plan to the contrary, no distributions, partial or otherwise, shall be made with respect to a Disputed Claim until such Claim becomes an Allowed Claim. Subject to the provisions of this Plan, after a Disputed Claim becomes an Allowed Claim, the holder of such an Allowed Claim will receive all distributions to which such holder is then entitled under this Plan on the next scheduled distribution date or as the Liquidating Trustee otherwise determines in its reasonable discretion. No post-Effective Date interest shall be paid on distributions hereunder. If the holder of a Claim incorporates more than one Claim in a Proof of Claim then: (i) such Claims will be considered one Claim for purposes of this Plan; and (ii) no such Claim will be bifurcated into an Allowed portion and a Disputed portion.

11.5 Distributions After Allowance

As soon as reasonably practicable after the date that an order or judgment of the Bankruptcy Court allowing all or part of any General Unsecured Claim that is a Disputed Claim becomes a Final Order, the Liquidating Trustee shall distribute to the Holder of such Claim the distribution (if any) that would have been made to such Holder had such Allowed General Unsecured Claim been Allowed when distributions were made. After a Disputed Claim becomes an Allowed General Unsecured Claim or is otherwise resolved, any excess Cash or other property that was reserved on account of such Disputed Claim, if any, shall become property of the Liquidating Trust for the benefit of Allowed General Unsecured Claims.

11.6 Reduction of Claims

Notwithstanding the contents of the Bankruptcy Schedules, Claims listed therein as undisputed, liquidated and not contingent shall be reduced by the amount, if any, that was paid by the Debtor prior to the Effective Date, including pursuant to orders of the Bankruptcy Court. To the extent such payments are not reflected in the Bankruptcy Schedules, such Bankruptcy Schedules will be deemed amended and reduced to reflect that such payments were made. Nothing in this Plan shall preclude the Liquidating Trustee from paying Claims that the Debtor was authorized to pay pursuant to any Final Order entered by the Bankruptcy Court prior to the Effective Date.

11.7 Compliance with Tax Requirements/Allocations

In connection with this Plan, to the extent applicable, the Liquidating Trustee shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions thereto shall be subject to such withholding and reporting requirements. Any

amounts so withheld from any payment made under this Plan shall be deemed paid to the holder of the Allowed Claim subject to withholding. The Liquidating Trustee may require that each holder complete the appropriate Internal Revenue Service Form W-8BEN, Internal Revenue Service Form W-8BEN-E, or Internal Revenue Service Form W-9, or successor form as applicable, to each holder *provided, however*, that the sole remedy in the event a holder fails to comply with such a request within six months shall be to make a proper withholding of tax to the extent required by applicable law. Notwithstanding any provision in this Plan to the contrary, the Liquidating Trustee shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of a distribution to be made under this Plan to generate sufficient funds to pay applicable withholding taxes with respect to such distribution, withholding distributions pending receipt of information necessary to facilitate such distribution, or establishing any other mechanisms it believes are reasonable and appropriate. If the Liquidating Trustee fails to withhold with respect to any such holder's distribution, and is later liable for the amount of such withholding, the holder shall reimburse the Liquidating Trustee. The Liquidating Trustee reserves the right to allocate all distributions made under this Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens and encumbrances. Unless otherwise required by law or provided in this Plan, distributions in respect of Allowed Claims shall be allocated first to the principal amount (as determined for U.S. federal income tax purposes) of such Allowed Claims, and then, to the extent the consideration exceeds the principal amount of such Allowed Claims, to any portion of such Allowed Claims for accrued but unpaid interest.

The Liquidating Trustee will in good faith value the Liquidating Trust Assets. The Liquidating Trustee shall make the respective values available from time to time, to the extent relevant, and such values shall be used consistently by all parties to the Liquidating Trust (including, without limitation, the Debtor, the Liquidating Trustee, and the Trust Beneficiaries) for all U.S. federal income tax purposes.

ARTICLE XII CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN

12.1 Conditions Precedent to Confirmation

The following are conditions precedent to the occurrence of Confirmation:

12.1.1 The Bankruptcy Court shall have entered an order, in a form reasonably acceptable to the Debtor, approving the adequacy of the Disclosure Statement; and

12.1.2 The Confirmation Order approving and confirming the Plan, as such Plan may have been modified, amended or supplemented, shall have been entered in form and substance reasonably acceptable to the Debtor.

12.2 Conditions Precedent to Effective Date

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in accordance with Section 12.4 below:

12.2.1 The Confirmation Order shall have been entered in form and substance reasonably acceptable to the Debtor and such order shall have become a Final Order.

12.2.2 No stay of the Confirmation Order is effect; and

12.2.3 All documents, instruments and agreements, in form and substance satisfactory to the Debtor, provided for or necessary to implement the Plan have been executed and delivered.

12.3 **Substantial Consummation**

On the Effective Date, the Plan shall be deemed to be substantially consummated under Bankruptcy Code sections 1101(2).

12.4 **Waiver of Conditions**

Each of the conditions set forth in Section 12.2 hereof may be waived in whole or in part by the Debtor. The failure to satisfy or waive any condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied.

12.5 **Revocation, Withdrawal, or Non-consummation**

The Debtor reserves the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file subsequent plans. If the Debtor revokes or withdraws the Plan, or if Confirmation or substantial consummation of the Plan does not occur, then: (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Class of Claims) unless otherwise agreed to by the Debtor and any counterparty to such settlement or compromise, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (iii) nothing contained in the Plan, and no acts taken in preparation for Consummation of the Plan, shall (a) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or any other Person, (b) prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor, or (c) constitute an admission of any sort by the Debtor or any other Person.

ARTICLE XIII AMENDMENTS AND MODIFICATIONS

The Debtor may alter, amend, or modify the Plan under Bankruptcy Code section 1127(a) at any time prior to the Confirmation Date. After the Confirmation Date and prior to “substantial consummation” of the Plan, as defined in Bankruptcy Code section 1101(2), the Debtor may, under Bankruptcy Code section 1127(b), institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan, so long as such proceedings do not materially adversely affect the treatment of holders of Claims or Interests under the Plan; *provided, however*, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

ARTICLE XIV

RETENTION OF JURISDICTION

Under Bankruptcy Code sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

(A) Allow, disallow, determine, liquidate, classify, estimate or establish the priority or Secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the Secured or unsecured status, priority, amount or allowance of Claims or Interests;

(B) Hear and determine all applications for compensation and reimbursement of expenses of Professionals under Bankruptcy Code sections 327, 328, 330, 331, 503(b), or 1129(a)(4);

(C) Hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable, including, if necessary, the nature or amount of any required cure or the liquidating of any claims arising therefrom;

(D) Hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Case;

(E) Enter and enforce such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

(F) Hear and determine disputes arising in connection with the interpretation, implementation, Consummation, or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;

(G) Consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(H) Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with implementation, Consummation, or enforcement of the Plan or the Confirmation Order;

(I) Enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;

(J) Hear and determine any matters arising in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order or any other contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

(K) Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Case or pursuant to the Plan;

(L) Recover all assets of the Debtor and property of the estate, wherever located;

(M) Hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 346, 505, and 1146;

(N) Hear and determine all disputes involving any releases granted in the Plan;

(O) Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

(P) Enter an order or final decree concluding or closing the Chapter 11 Case;
and

(Q) Enforce all orders previously entered by the Bankruptcy Court.

ARTICLE XV COMPROMISES AND SETTLEMENTS

Pursuant to Bankruptcy Code section 363 and Bankruptcy Rule 9019, and in consideration for the classification, distribution and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests and controversies resolved pursuant to the Plan, including, without limitation, all Claims arising prior to the Petition Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, arising out of, relating to or in connection with the business or affairs of, or transactions with, the Debtor. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in the Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtor, the estate, holders of Claims and other parties in interest, and are fair, equitable and within the range of reasonableness.

ARTICLE XVI
MISCELLANEOUS PROVISIONS

16.1 Bar Dates for Certain Actions

16.1.1 *Administrative Claims and Professional Fee Claims*

Except for Professional Fee Claims, all requests for payment or any other means of preserving and obtaining payment of Administrative Claims that have not been paid in the ordinary course, released or otherwise settled, must be filed with the Bankruptcy Court and served upon the Liquidating Trustee no later than the Administrative Claims Bar Date. Any request for payment of Administrative Claims that is not filed by the Administrative Claims Bar Date will be forever disallowed and barred, and holders of such Claims will not be able to assert such Claims in any manner against the Debtor, the Debtor's estate, the Liquidating Trustee, the Liquidating Trust or any of their respective Affiliates or representatives. Objections to such requests must be filed and served on the requesting party by the later of (a) sixty (60) days after the Effective Date and (b) sixty (60) days after the filing of the applicable request for payment of such Administrative Claims.

With respect to Professional Fee Claims, each holder of a Professional Fee Claim seeking an award by the Bankruptcy Court of compensation for services rendered and/or reimbursement of expenses incurred through and including the Effective Date must file and serve its respective final application for allowance of such Professional Fee Claim no later than the date that is thirty (30) days after the Effective Date or such other date as may be fixed by the Court. Objections to applications of such Professionals for compensation and/or reimbursement of expenses must be filed and served on the Liquidating Trustee and the requesting Professional no later than thirty (30) after the date on which the applicable application for compensation or reimbursement was served.

16.1.2 *Administrative Tax Claims*

All requests for payment of Administrative Claims by a governmental unit for taxes (and for interest and/or penalties related to such taxes) for any tax year or period, all or any portion of which occurs or falls within the period from and including the Petition Date through and including the Effective Date, and for which no bar date has otherwise been previously established, must be filed and served on the Liquidating Trustee and any other party specifically requesting a copy in writing on or before the later of: (i) thirty (30) days following the Effective Date; and (ii) one hundred and twenty (120) days following the filing of the tax return for such taxes for such tax year or period with the applicable governmental unit. Any holder of any such Claim that is required to file a request for payment of such taxes and does not file and properly serve such a claim by the applicable bar date shall be forever barred from asserting any such claim against the Debtor, the Liquidating Trustee or the property, regardless of whether any such Claim is deemed to arise prior to, on, or subsequent to the Effective Date. Any interested party desiring to object to an Administrative Claim for taxes must file and serve its objection on counsel to the Debtor, the Liquidating Trustee and the relevant taxing authority no later than ninety (90) days after the taxing authority files and serves its application.

16.2 Severability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtor, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

16.3 Successors and Assigns

The rights, benefits and obligations of any Person named or referred to in the Plan, including any holder of a Claim, shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such entity.

16.4 Releases

16.4.1 *Releases by the Debtor*

Except as otherwise expressly provided in the Plan or the Confirmation Order, on the Effective Date, for good and valuable consideration, the Debtor and its estate, to the fullest extent permissible under applicable law, shall be deemed to completely and forever release, waive, void, extinguish and discharge unconditionally, each and all of the Released Parties of and from any and all claims, obligations, suits, judgments, damages, debts, rights, remedies, Causes of Action, Avoidance Actions and liabilities of any nature whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Effective Date (including prior to the Petition Date) in connection with or related to the Debtor, its assets, property and estate, the Chapter 11 Case, the Plan or the Disclosure Statement. For the avoidance of doubt, the foregoing releases described in this Plan shall not waive, affect, limit, restrict or otherwise modify the right of the Debtor and the Liquidating Trustee to object to any Claim not expressly Allowed under the Plan. The Debtor and its estate and any of their respective successors, assigns or representatives shall be permanently, forever and completely stayed, restrained, prohibited, barred and enjoined from pursuing or taking any action on account of the claims or other actions released herein.

Without limiting the foregoing, the Confirmation Order shall include a finding and order providing that any and all claims, obligations, suits, judgments, damages, debts, rights, remedies, Causes of Action, Avoidance Actions and liabilities of any nature whatsoever, asserted or that could have been asserted directly or indirectly on behalf of the Debtor or the

Debtor's estate, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Effective Date (including prior to the Petition Date) in connection with or related to the Debtor, its assets, property and estate, the Chapter 11 Case, the Sale, the Plan, or the Disclosure Statement against the Prepetition Lenders, if any, arising under, or in any way related to, the Prepetition Credit Agreement are property of the Debtor's bankruptcy estate, and by the terms of the release contained within this paragraph are released and are barred from being asserted in any manner by the Debtor, the post-Effective Date Debtor, the Purchaser, the Liquidating Trustee, the holders of Claims against the Debtor, the current or former holders of Interests in the Debtor, or any other Person, nor are they being retained by, or conveyed to, any Person pursuant to this Plan or any Plan document.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval pursuant to Bankruptcy Rule 9019, of the release set forth in Section Error! Reference source not found. of the Plan, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that such release is: (i) in exchange for the good and valuable consideration provided by the Released Parties; (ii) a good faith settlement and compromise of the claims released by Section 15.4.1 of the Plan; (iii) in the best interests of the Debtor, its estate and all holders of Claims and Interests; (iv) fair, equitable and reasonable; (v) given and made after due notice and opportunity for a hearing; and (vi) a bar to any Person asserting any claim or Cause of Action released by Section Error! Reference source not found. of the Plan.

Notwithstanding the foregoing, nothing in this Section 15.4 shall release any Released Party or Entity or Person from its respective rights and obligations under the Plan or the Confirmation Order.

16.4.2 *No Waiver*

Notwithstanding anything to the contrary contained in this Article XV, the releases set forth in Sections 15.4.1 and 15.4.2 of the Plan shall not, and shall not be deemed to, limit, abridge or otherwise affect the rights of the Liquidating Trustee to enforce, sue on, settle or compromise the rights, claims and other matters vested in and retained by the Liquidating Trust pursuant to this Plan or the Confirmation Order.

16.5 **Exculpation**

The Debtor, the Independent Manager and the Debtor's Professionals **SHALL NOT BE LIABLE FOR ANY** cause of action arising out of or related to any act or omission in connection with or relating to: (a) the formulation, preparation, solicitation, dissemination, negotiation, or filing of this Plan, the Plan Supplement, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created or entered into in connection with any of the foregoing; (b) the Chapter 11 Case; (c) the pursuit of Confirmation of the Plan; (d) the administration and implementation of the Plan; (e) the distribution of property under the Plan; and/or (f) any other prepetition or postpetition act

taken or omitted to be taken in connection with or in contemplation of the restructuring and/or liquidation of the Debtor. All holders of Claims and Interests are enjoined from asserting or prosecuting any Claim or cause of action against the Debtor, the Independent Manager or the Debtor's Professionals as to any Claim or cause of action as to which the Debtor, the Independent Manager and the Debtor's Professionals have been exculpated pursuant to this Plan.

16.6 Indemnification

The Liquidating Trustee shall not be liable for any act or omission taken or omitted to be taken in his or her capacity as the Liquidating Trustee, other than acts or omissions resulting from such Person's willful misconduct, gross negligence or fraud. The Liquidating Trustee may, in connection with the performance of his or her functions, and in his or her sole absolute discretion, consult with attorneys, accountants and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such professionals. Notwithstanding such authority, the Liquidating Trustee shall be under no obligation to consult with attorneys, accountants or his or her agents, and his or her determination to not do so should not result in imposition of liability on the Liquidating Trustee unless such determination is based on willful misconduct, gross negligence or fraud. The Liquidating Trust shall indemnify and hold harmless the Liquidating Trustee and his or her agents, representatives, professionals, and employees from and against and in respect to any and all liabilities, losses, damages, claims, costs and expenses, including, but not limited to attorneys' fees and costs arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Liquidating Trust or the implementation or administration of the Plan; provided, however, that no such indemnification will be made to such Persons for such actions or omissions as a result of willful misconduct, gross negligence or fraud.

16.7 Permanent Injunction

Except as otherwise expressly provided in this Plan and the Confirmation Order, all Persons who have held, hold or may hold Claims against, or Interests in, the Debtor are permanently enjoined, on and after the Effective Date, to the fullest extent permissible under applicable law, as such law may be extended or integrated after the Effective Date, from: (i) commencing or continuing in any manner any action or other proceeding of any kind against the Debtor, the Liquidating Trust, or their assets with respect to any such Claim or Interest in any venue other than the United States Bankruptcy Court for the Western District of Texas; (ii) the enforcement, attachment, collection, or recovery by any manner or means of judgment, award, decree or order against the Debtor, the Liquidating Trust, or their assets on account of any such Claim or Interest in any venue other than the United States Bankruptcy Court for the Western District of Texas; (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtor, the Liquidating Trust, or their assets on account of any such Claim or Interest in any venue other than the United States Bankruptcy Court for the Western District of Texas; and (iv) asserting any right of setoff, recoupment or subrogation of any kind against any obligation due from the Debtor, the Liquidating Trust, or their assets on account of any such Claim or Interest in any venue other than the United States Bankruptcy Court for the Western District of Texas.

16.8 Bankruptcy Rule 3016 Compliance

The Debtor's compliance with the formal requirements of Bankruptcy Rule 3016(c) shall not constitute an admission that the Plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code.

16.9 Term of Injunctions or Stay

Unless otherwise provided in the Plan or Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under Bankruptcy Code sections 105 or 362 or otherwise, and in existence on the Confirmation Date (excluding any injunctions or stays contained in the Plan or Confirmation Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or Confirmation Order shall remain in full force and effect in accordance with their terms.

16.10 Integral to Plan

Each of the injunctions provided in this Plan is an integral part of the Plan and is essential to its implementation. Each of the other Persons protected by the injunctions set forth in this Plan shall have the right to independently seek the enforcement of such injunctions.

16.11 Preservation of Rights of Action; Settlement

Any and all Causes of Action that the Debtor or its estate may hold against any Person, except for any action or claim released pursuant to Article XV of the Plan, shall automatically vest in the Liquidating Trust as set forth in Section 4.8 above.

16.12 Binding Effect

The Plan shall be binding upon and inure to the benefit of the Debtor, all present and former holders of Claims against and Interests in the Debtor, its successors and assigns, including, but not limited to, the Debtor, and all other parties-in-interest in the Chapter 11 Case.

16.13 Notices

Any notice, request, or demand required or permitted to be made or provided under the Plan to or upon the Debtor or the Liquidating Trustee shall be: (i) in writing; (ii) served by (a) certified mail, return receipt requested, (b) hand delivery, (c) overnight delivery service or (d) facsimile transmission; and (iii) deemed to have been duly given or made when actually delivered or, in the case of facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Debtor:

Trinity River Resources, LP
c/o John T. Young, Jr., Independent Manager
Conway Mackenzie Management Services
1301 McKinney, Suite 2025
Houston, Texas 77010

With a copy to (which shall not constitute notice):

William A. (Trey) Wood, III
Bracewell LLP
711 Louisiana, Suite 2300
Houston, TX 77002
Phone: (713) 223-2300
Fax: (713) 221-1212

If to the Liquidating Trustee

Trinity River Resources, LP
c/o John T. Young, Jr., Independent Manager
Conway Mackenzie Management Services
1301 McKinney, Suite 2025
Houston, Texas 77010

With a copy to (which shall not constitute notice):

William A. (Trey) Wood, III
Bracewell LLP
711 Louisiana, Suite 2300
Houston, TX 77002
Phone: (713) 223-2300
Fax: (713) 221-1212

16.14 Setoffs/Counterclaims

The Debtor may, but shall not be required to, setoff or counterclaim against any Claim and the payments or other distributions to be made pursuant to the Plan in respect of the Claim, claims of any nature whatsoever the estate may have against the holder of the Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor of any claim that the estates may have against the holder. Setoffs or counterclaims arising from events after the Petition Date shall reduce the payouts under any Allowed Claim dollar for dollar. Setoffs or counterclaims arising from pre-petition events shall reduce the amount of the Allowed Claim and, therefore, shall reduce the payout amount proportionally with the reduction in the Allowed Claim. If any counterclaim or setoff asserted by the Debtor exceeds the amount of any Claim, the holder of such Claim shall not be entitled to any distribution under the Plan, and the Debtor will reserve the right to recover any such excess counterclaim or set-off from the holder of the applicable Claim. After the Effective Date, the rights afforded to the Debtor under this paragraph shall apply to the Liquidating Trustee. **In no event shall any holder of Claims or**

Interests be entitled to setoff any Claim or Interest against any claim, right, or cause of action of the Debtor or the Liquidating Trustee, as applicable, unless such holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or Interest or otherwise that such holder asserts, has, or intends to preserve any right of setoff pursuant to Bankruptcy Code section 553 or otherwise.

16.15 Recoupment

Any Holder of a Claim or Interest shall not be entitled to recoup any Claim or Interest against any Claim, right, or cause of action of the Debtor or the Liquidating Trustee, as applicable, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtor on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

16.16 Release of Liens

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtor's estate shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtor and its successors and assigns.

16.17 Request for Expedited Tax Review

The Liquidating Trustee shall have the right to request an expedited determination under Bankruptcy Code section 505(b) with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Petition Date through the Effective Date.

16.18 No Admissions

Notwithstanding anything herein to the contrary, nothing in the Plan shall be deemed as an admission by the Debtor with respect to any matter set forth herein, including liability on any Claim.

16.19 Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of the State of Texas, without giving effect to the principles of conflicts of law thereof, shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control) as well as corporate governance matters with respect to the Debtor.

ARTICLE XVII
CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

17.1 Certain Material U.S. Federal Income Tax Consequences of the Plan

The following discussion summarizes certain material federal income tax consequences of the implementation of the Plan to certain holders of Allowed Prepetition Lenders Secured Claims and Allowed General Unsecured Claims. For the avoidance of doubt, Allowed Claims include any Disputed Claim when such Claim becomes Allowed under the Plan. This summary does not address the U.S. federal income tax consequences to: (i) holders of Claims or Interests who are deemed to have rejected a Plan in accordance with the provisions of section 1126(g) of the Bankruptcy Code (i.e., holders of Interests); (ii) holders whose Claims are entitled to payment in full in Cash or are otherwise unimpaired under the Plan (i.e., holders of Allowed Priority Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Allowed Other Secured Claims); or (iii) holders whose Claims are extinguished without distribution in exchange therefore that are not entitled to vote to accept or reject the Plan.

This summary is based on the Internal Revenue Code of 1986, as amended (the “IRC”), existing and proposed Treasury regulations promulgated thereunder (“Treasury Regulations”), judicial decisions, and published administrative rules and pronouncements of the Internal Revenue Service (“IRS”) as in effect on the date hereof, all of which are subject to change, possibly on a retroactive basis. Any such change could significantly affect the U.S. federal income tax consequences described below.

The U.S. federal income tax consequences of the Plan are complex and are subject to significant uncertainties. The Debtor has not requested a ruling from the IRS or an opinion of counsel with respect to any of the tax aspects of the Plan. The discussion below is not binding upon the IRS or the courts. Thus, no assurance can be given the IRS would not assert, or that a court would not sustain, a different position than any position discussed in this Disclosure Statement.

The following discussion does not address the U.S. federal income tax consequences to holders of Allowed Prepetition Lenders Secured Claims or Allowed General Unsecured Claims that are not U.S. Holders. For purposes of this discussion, a “U.S. Holder” is a holder that is: (i) an individual citizen or resident of the United States for U.S. federal income tax purposes; (ii) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof, or the District of Columbia; (iii) an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (iv) a trust (a) if a court within the United States is able to exercise primary jurisdiction over the trust’s administration and one or more U.S. persons have authority to control all substantial decisions of the trust, or (b) that has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to certain holders of Allowed Prepetition Lenders Secured Claims or Allowed General Unsecured Claims in light of their individual circumstances, nor does it purport to address the U.S. federal income tax consequences of the Plan to holders that are subject to special treatment under U.S. federal income tax laws (including, without limitation, non-U.S. Holders, brokers, dealers and traders in securities, banks, mutual funds, insurance companies, financial institutions,

thrifts, small business investment companies, regulated investment companies, tax-exempt organizations, certain expatriates, or former long term residents of the United States, pass-through entities or investors in pass-through entities, and those holding Claims as part of a hedge, straddle, conversion, constructive sale or conversion transaction). This discussion assumes, except where otherwise indicated, that such Claims are held as “capital assets” (generally, property held for investment) within the meaning of section 1221 of the IRC. In addition, this summary does not address state, local or foreign income or other tax consequences of the Plan.

If a holder is a partnership, other pass-through entity or a disregarded entity for U.S. federal income tax purposes, the tax treatment of a partner in or owner of such entity generally will depend upon the status of the partner or owner, and the activities of the entity. Partners or owners of other pass-through entities as well as non-U.S. Holders and other holders that are subject to special treatment under U.S. federal income tax law should consult their respective tax advisors regarding the U.S. federal income tax consequences of the Plan.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE PARTICULAR CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. EACH HOLDER OF A CLAIM IS URGED TO CONSULT ITS OWN TAX ADVISORS FOR THE U.S. FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES APPLICABLE TO IT UNDER THE PLAN.

17.2 Consequences to U.S. Holders of Certain Claims

The U.S. federal income tax consequences of the Plan to U.S. Holders of Claims, including the character, amount and timing of income, gain or loss recognized as a consequence of the Plan and the distributions provided for by the Plan, generally will depend upon, among other things: (i) the manner in which a holder acquired a Claim; (ii) the length of time a Claim has been held; (iii) whether the Claim was acquired at a discount; (iv) whether the holder has taken a bad debt deduction in the current or prior years; (v) whether the holder has previously included accrued but unpaid interest with respect to a Claim; (vi) the holder’s method of tax accounting; (vii) whether the holder will realize foreign currency exchange gain or loss with respect to a Claim; (viii) whether a Claim is an installment obligation for U.S. federal income tax purposes; and (ix) whether the transaction is treated as a “closed transaction.” Therefore, U.S. Holders of Claims are urged to consult their tax advisors for information that may be relevant to their particular situation and circumstances and the particular tax consequences to such holders as a result thereof.

Pursuant to the Plan, holders of Allowed Prepetition Lenders Secured Claims shall be deemed Allowed in the aggregate amount of [\$46,473,677]. On the Effective Date, the Agent shall receive, in full and final satisfaction, settlement, release and discharge of, and in exchange for such Allowed Prepetition Lenders Secured Claims, (a) an amount, in Cash, equal to the Sale Proceeds less (i) the Liquidating Trust Contribution and (ii) the amount of any interim distribution of the Sale Proceeds previously given to the Agent and/or Prepetition Lenders (if any) and (b) repayment of the Prepetition Lenders Advance Amount in accordance with Section 7.2.4 of the Plan. The Agent shall distribute the foregoing distribution to the Prepetition Lenders in accordance with the Prepetition Credit Agreement. All adequate protection and other payments made to or for the benefit of the Agent and/or the Lenders pursuant to the Final Cash Collateral Order shall be

retained by the Agent, Lenders, or their advisors, as applicable, without any diminution of the treatment set forth above. In the event the Claim of a holder of an Allowed Prepetition Lenders Secured Claim is not completely satisfied by such distribution of proceeds, the deficiency amount will constitute a Prepetition Lenders Deficiency Claim and such Prepetition Lenders Deficiency Claim will be designated and treated as a General Unsecured Claim under the Plan. Pursuant to the Plan, a holder of an Allowed General Unsecured Claim shall be entitled to its Pro Rata share of the Liquidating Trust Assets as set forth in the Plan.

Pursuant to the Plan, holders of Allowed General Unsecured Claims will receive their Pro Rata share of the Liquidating Trust Assets remaining after payment of all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Other Secured Claims, the repayment of the Prepetition Lenders Advance Amount and the reasonable administrative expenses of the Liquidating Trust.

As discussed below, the Liquidating Trust has been or will be structured to qualify as a “grantor trust” for U.S. federal income tax purposes. Accordingly, each U.S. Holder of an Allowed General Unsecured Claim receiving a beneficial interest in the Liquidating Trust will be treated for U.S. federal income tax purposes as directly receiving, and as a direct owner of, its respective share of the Liquidating Trust Assets (consistent with its economic rights in the trust). Pursuant to the Plan, the Liquidating Trustee (as provided in the Plan) will in good faith value the Liquidating Trust Assets, and all parties to the Liquidating Trust (including, without limitation, the Debtor, the Liquidating Trustee, and the Trust Beneficiaries) must consistently use such valuation for all U.S. federal income tax purposes.

After the Effective Date, a Trust Beneficiary’s share of any collections received on the assets of the Liquidating Trust (other than as a result of the subsequent disallowance of Disputed Claims) should not be included, for U.S. federal income tax purposes, in the Trust Beneficiary’s amount realized in respect of its Claim but should be separately treated as amounts realized in respect of such holder’s ownership interest in the underlying assets of the Liquidating Trust. See Section 17.3, “*Tax Treatment of the Liquidating Trust and Its Beneficial Holders*,” below.

17.2.1 ***Gain or Loss – Generally.***

In general, each U.S. Holder of an Allowed Prepetition Lenders Secured Claim or Allowed General Unsecured Claim will recognize gain or loss in an amount equal to the difference, between (i) such holder’s “amount realized” in respect of its Claim (other than any amounts received in respect of any Claim for accrued but unpaid interest), which is (A) the amount of Cash received (in the case of a holder of an Allowed Prepetition Lenders Secured Claim), if any, and (B) its Pro Rata share, if any (which would not apply to a holder of Allowed Prepetition Lenders Secured Claim which is fully satisfied for Cash) of the fair market value of the assets transferred to the Liquidating Trust and (ii) the holder’s adjusted tax basis in its Claim (other than any tax basis attributable to accrued but unpaid interest). Where gain or loss is recognized by a holder, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the holder, whether the Claim constitutes a capital asset in the hands of the holder and how long it has been held, whether the Claim was acquired at a market discount, and whether and to what extent the holder previously had claimed a bad debt deduction. See the discussions of “accrued interest” and “market

discount” below. Holders of Allowed Prepetition Lenders Secured Claims and Allowed General Unsecured Claims are urged to consult their tax advisors to determine the character of any gain or loss recognized in connection with the implementation of the Plan.

17.2.2 *Accrued Interest.*

A portion of the consideration received by the U.S. Holders of Allowed Prepetition Lenders Secured Claims or Allowed General Unsecured Claims may be attributable to accrued interest on such Allowed Claims. Such amount may be taxable to that holder as interest income if such accrued interest has not been previously included in such U.S. Holder’s gross income for U.S. federal income tax purposes. Conversely, U.S. Holders of Allowed Claims may be able to recognize a deductible loss to the extent any accrued interest on the Allowed Claims was previously included in such U.S. Holder’s gross income but was not paid in full.

If the fair market value of the consideration is not sufficient to fully satisfy all principal and interest on Allowed Prepetition Lenders Secured Claims or Allowed General Unsecured Claims, the extent to which such consideration will be attributable to accrued interest is unclear. The aggregate consideration to be distributed to holders of Allowed Claims will be allocated first to the principal amount of such Allowed Claims, with any excess allocated to accrued but unpaid interest on such Claims, if any. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan is binding for U.S. federal income tax purposes; however, the applicable Treasury Regulations generally treat payments as allocated first to any accrued but unpaid interest and then as a payment of principal. The IRS could take the position that the consideration received by the U.S. Holder should be allocated other than as provided in the Plan. U.S. Holders of Allowed Claims should consult their own tax advisors regarding the proper allocation of the consideration received by them under the Plan.

17.2.3 *Market Discount.*

Under the “market discount” provisions of the IRC, some or all of any gain realized by a U.S. Holder of an Allowed Claim may be treated as ordinary income (instead of capital gain), to the extent of the amount of “market discount” constituting the Allowed Claim. In general, a debt instrument is considered to have been acquired by a U.S. Holder with “market discount” if it is acquired other than on original issue and if the U.S. Holder’s adjusted tax basis in the debt instrument is less than (a) the sum of all remaining payments to be made on the debt instrument, excluding “qualified stated interest” or (b) in the case of a debt instrument issued with original issue discount, its adjusted issue price, in each case, by at least a *de minimis* amount (equal to 0.25% of the sum of all remaining payments to be made on the debt instrument, excluding qualified stated interest, multiplied by the number of remaining whole years to maturity).

17.3 **Tax Treatment of Liquidating Trust and Its Beneficial Holders**

17.3.1 *Classification of the Liquidating Trust*

The Liquidating Trust is intended to qualify as a “liquidating trust” for U.S. federal income tax purposes. In general, a liquidating trust is not a separate taxable entity, but rather is treated for

U.S. federal income tax purposes as a “grantor trust” (i.e., a pass-through type entity). However, merely establishing a trust as a liquidating trust does not ensure that it will be treated as a grantor trust for U.S. federal income tax purposes. The IRS has issued guidelines that set forth the general criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The Liquidating Trust has been or will be structured with the intention of complying with such general criteria. Pursuant to the Plan, and in conformity with such IRS guidance, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Trust Beneficiaries) are required to treat, for U.S. federal income tax purposes, the Liquidating Trust as a grantor trust of which the Trust Beneficiaries are the owners and grantors. The following discussion assumes that the Liquidating Trust will be so respected for U.S. federal income tax purposes. However, no ruling has been requested from the IRS and no opinion of counsel has been requested concerning the tax status of the Liquidating Trust as a grantor trust. Accordingly, there can be no assurance that the IRS would not take a contrary position. If the IRS were to successfully challenge the classification of the Liquidating Trust, the U.S. federal income tax consequences to the Liquidating Trust and its beneficiaries could vary from those discussed herein (including the potential for an entity-level tax on income of the Liquidating Trust).

17.3.2 General Tax Reporting by the Liquidating Trust and its Beneficiaries

For U.S. federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Trust Beneficiaries) must treat the transfer of the Liquidating Trust Assets to the Liquidating Trust in accordance with the terms of the Plan. Pursuant to the Plan, the Liquidating Trust Assets are treated, for U.S. federal income tax purposes, as having been transferred, subject to any obligations relating to those assets, directly to the holders of the respective Claims in satisfaction of their Claims (with each holder receiving an undivided interest in such assets in accord with their economic interests in such assets), followed by the transfer by the holders to the Liquidating Trust of such assets in exchange for interests in the Liquidating Trust. Accordingly, all parties must treat the Liquidating Trust as a grantor trust of which the holders of the interests in the Liquidating Trust are the owners and grantors, and the direct owners of an undivided interest in the Liquidating Trust Assets, consistent with their economic interests therein, for all U.S. federal income tax purposes.

Pursuant to the Plan the Liquidating Trustee, will in good faith value the Liquidating Trust Assets. The Liquidating Trustee shall make the respective values available from time to time, to the extent relevant, and such values shall be used consistently by all parties to the Liquidating Trust (including, without limitation, the Debtor, the Liquidating Trustee, and the Trust Beneficiaries) for all U.S. federal income tax purposes.

Allocations of taxable income of the Liquidating Trust among the Trust Beneficiaries shall be determined by reference to the manner in which an amount of cash equal to such income would be distributed (were such Cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all its assets (valued at their tax book value) to the Trust Beneficiaries, adjusted for prior income and loss and taking into account all prior and concurrent distributions from such Liquidating Trust. Similarly, taxable loss of the Liquidating Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining assets of the Liquidating Trust. The tax book value of the assets of the Liquidating Trust for this purpose shall equal their

fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the IRC, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements. The effect of the above described allocation is to allocate taxable income or loss (i.e., the tax impact of receipts and expenditures) in a partnership-type fashion, to the Trust Beneficiaries.

Taxable income or loss allocated to each Trust Beneficiary will be treated as income or loss with respect to such beneficiary's undivided interest in the Liquidating Trust Assets, and not as income or loss with respect to its prior Allowed Claim. The character of any income and the character and ability to use any loss will depend on the particular situation of such Trust Beneficiary.

The Liquidating Trustee will file with the IRS returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The Liquidating Trustee will annually send to the holders of record of interests in the Liquidating Trust a separate statement regarding the receipts and expenditures of the Liquidating Trust as relevant for U.S. federal income tax purposes and will instruct all such holders to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such holder's underlying beneficial holders with instructions to utilize such information in preparing their U.S. federal income tax returns.

The Liquidating Trustee will comply with all applicable governmental withholding requirements. Thus, in the case of any Trust Beneficiary that is *not* a U.S. Holder, the Liquidating Trustee may be required to withhold up to 30% of the income or proceeds allocable to such persons. *As indicated above, the foregoing discussion of the U.S. federal income tax consequences of the Plan does not generally address the consequences to non-U.S. Holders; accordingly, such holders should consult their tax advisors with respect to the U.S. federal income tax consequences of the Plan, including owning an interest in the Liquidating Trust.*

17.4 Tax Reporting for Assets Allocable to Disputed Claims and Distributions from the Liquidating Trust Disputed Claims Reserve

The Liquidating Trustee may, in accordance with the Plan, establish a reserve for Disputed Claims (the "Disputed Claims Reserve"). If such Disputed Claims Reserve is established, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by either of the Liquidating Trustee of an IRS private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), the Liquidating Trustee may (A) elect to treat any assets allocable to, or retained on account of, Disputed Claims as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9, and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. In such case, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Trust Beneficiaries) will be required to report for all U.S. federal income tax and other applicable tax purposes consistently with such treatment.

If treated as a "disputed ownership fund" for U.S. federal income tax purposes, the Disputed Claims Reserve will be a separate taxable entity for U.S. federal income tax purposes,

and all actual and constructive distributions from such reserve (including to the extent assets were initially allocable to Disputed Claims but are no longer) will be taxable to such reserve as if sold at fair market value. In such case, any actual or constructive distributions from the Disputed Claims Reserve to holders of Allowed Claims (including to previously Allowed Claims in the event a Disputed Claim is disallowed) will be treated for U.S. federal income tax purposes as if received directly from the Debtor on the original Claim in respect of which the interest in the Liquidating Trust was issued. Thus, a holder must be careful to differentiate between the tax treatment of actual or constructive distributions from the Disputed Claims Reserve and the tax treatment of distributions out of assets of the Liquidating Trust to which the holder is already considered the direct owner for U.S. federal income tax purposes (discussed above).

Holders should consult their own tax advisors with respect to the U.S. federal income tax consequences of the Plan to them based on their own circumstances if the Disputed Claims Reserve is established.

17.5 Information Reporting and Withholding

All distributions to holders of Allowed Claims under the Plan are subject to any applicable tax withholding, including employment tax withholding. Under U.S. federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to “backup withholding” at the then applicable withholding rate (currently 28%). Backup withholding generally applies if the holder (a) fails to furnish its social security number or other taxpayer identification number, (b) furnishes an incorrect taxpayer identification number, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the tax identification number provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

17.6 Importance of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIM HOLDER’S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE, AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

ARTICLE XVIII CONCLUSION AND RECOMMENDATION

The Debtor believes that the Plan is in the best interests of all Holders of Claims, and urge those Holders of Claims entitled to vote to accept the Plan and to evidence such acceptance by returning their Ballots so they will be RECEIVED by the Voting Agent no later than [DATE]. If

the Plan is not confirmed, or if Holders in those Classes do not vote to accept the Plan, the Holders in those Classes may not receive a distribution.

(Signature Page Immediately Follows)

Dated: [#]

TRINITY RIVER RESOURCES, LP

By: _____
Name: John T. Young, Jr.
Title: Independent Manager