

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

IN RE:

WHISTLER ENERGY II, LLC,

DEBTOR.

CASE NO. 16-10661

SECTION B

CHAPTER 11

**DEBTOR'S DISCLOSURE STATEMENT FOR JOINTLY PROPOSED
CHAPTER 11 PLAN OF REORGANIZATION OF WHISTLER ENERGY II, LLC
DATED OCTOBER 20, 2016**

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT.

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Dated: October 20, 2016

INTRODUCTORY DISCLOSURES

THIS DISCLOSURE STATEMENT, WHICH HAS BEEN FILED BY THE DEBTOR, IN ITS CAPACITY AS DEBTOR AND DEBTOR-IN-POSSESSION, CONTAINS A SUMMARY OF MATERIAL PROVISIONS OF THE JOINTLY PROPOSED PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE, INCLUDING PROVISIONS RELATING TO THE TREATMENT OF CLAIMS AGAINST AND INTERESTS IN THE DEBTOR AND THE MEANS OF IMPLEMENTATION OF THE PLAN.

THIS DISCLOSURE STATEMENT ALSO SUMMARIZES CERTAIN FINANCIAL INFORMATION CONCERNING THE DEBTOR AND THE CLAIMS ASSERTED AGAINST THE DEBTOR IN THIS BANKRUPTCY CASE. WHILE THE DEBTOR BELIEVES THAT THIS DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS AND INFORMATION SUMMARIZED, HOLDERS OF CLAIMS AND INTERESTS SHOULD CAREFULLY REVIEW THE ENTIRE PLAN AND EACH OF THE DOCUMENTS REFERENCED IN THIS DISCLOSURE STATEMENT AND SHOULD SEEK THE ADVICE OF THEIR OWN LEGAL COUNSEL AND OTHER ADVISORS BEFORE CASTING THEIR BALLOTS ON THE PLAN.

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

UNLESS INDICATED OTHERWISE, THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF OR THE DATE OTHERWISE INDICATED HEREIN, AND NEITHER DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY RECOVERY MADE IN CONNECTION WITH THE PLAN WILL, UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT SINCE THE DATE THIS DISCLOSURE STATEMENT AND THE MATERIALS RELIED UPON IN PREPARING THIS DISCLOSURE STATEMENT WERE COMPILED.

THE APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN OR A GUARANTEE OF THE ACCURACY

AND COMPLETENESS OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION, OR WAIVER.

NOTHING CONTAINED IN THIS DISCLOSURE STATEMENT, EXPRESS OR IMPLIED, IS INTENDED TO GIVE RISE TO ANY COMMITMENT OR OBLIGATION OF THE PLAN PROPONENTS OR ANY OTHER PARTY, NOR WILL IT BE CONSTRUED AS CONFERRING UPON ANY PERSON ANY RIGHTS, BENEFITS, OR REMEDIES OF ANY NATURE WHATSOEVER. THIS DISCLOSURE STATEMENT IS INFORMATIONAL ONLY. ADDITIONALLY, HOLDERS OF CLAIMS AND INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. EACH CREDITOR AND INTEREST HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL, AND TAX ADVISORS AS TO ANY MATTER CONCERNING THE PLAN, THE EFFECTS OF IMPLEMENTATION OF THE PLAN, AND THE VOTING PROCEDURES APPLICABLE TO THE PLAN.

IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE OCCURS, ALL HOLDERS OF CLAIMS AND INTERESTS (INCLUDING THOSE HOLDERS OF CLAIMS WHO DO NOT SUBMIT BALLOTS TO ACCEPT OR REJECT THE PLAN, OR WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE TERMS OF THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY.

ARTICLE I INTRODUCTION

The Debtor¹ (“Whistler Energy II, LLC”), as debtor and debtor-in-possession, submits this disclosure statement (the “Disclosure Statement”) pursuant to section 1125 of title 11 of the Bankruptcy Code in connection with the solicitation of votes on the *JOINTLY PROPOSED CHAPTER 11 PLAN OF REORGANIZATION OF WHISTLER ENERGY II, LLC DATED OCTOBER 19, 2016* (the “Plan,” attached hereto as **Exhibit A**). To the extent any inconsistencies exist between this Disclosure Statement and the Plan, the Plan governs.

Capitalized terms used but not defined herein have the meanings assigned to them in Article I of the Plan.

WHO IS ENTITLED TO VOTE: Under the Bankruptcy Code, only Holders of Claims or Interests in “impaired” classes are entitled to vote on the Plan (unless, for reasons discussed in more detail below, such Holders are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code). Under section 1124 of the Bankruptcy Code, a class of claims or interests is deemed to be “impaired” under the Plan unless (i) the Plan leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder thereof or (ii)

¹ Please refer to Article I.B of the Plan for the defined terms that are used in the Plan, and note that certain additional defined terms are located within the body of this Disclosure Statement where indicated.

notwithstanding any legal right to an accelerated payment of such claim or interest, the Plan, among other things, cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before the default.

The following table summarizes: (i) the designation of Claims and Interests under the Plan, (ii) which Classes are Impaired and Unimpaired by the Plan, (iii) which Classes are entitled to vote and not entitled to vote on the Plan, and (iv) the estimated recoveries for holders of Claims. The table is qualified in its entirety by reference to the full text of the Plan. For a more detailed summary of the terms and provisions of the Plan, *see Article IV—Summary of the Plan* below.

All Classified Claims, except for the Senior Credit Facility Claims; the Commerce Unsecured Claims; the Argo Secured Claim; and the Unclassified Claims other than Administrative Claims, are subject to Disallowance if the Holder of such Claims is the alleged transferee of a transfer that is an Avoidance Action. Also, unless the Claims other than the Senior Credit Facility Claims and the Commerce Unsecured Claims (which are Allowed Claims under the Plan) are or become Allowed, the Debtor, and as applicable the Reorganized Debtor, and Litigation Trustee retain all rights to object to any Claim under applicable non-bankruptcy law or bankruptcy law. This Disclosure Statement shall not be used as a basis for Allowance of any Claim.

Class	Designation	Impairment Status	Voting Rights	Estimated Amount of Claims	Estimated Recovery
N/A	Administrative Claims	N/A	None	Approximate amount (unpaid): \$1 Million	100% of Allowed Claims
N/A	Priority Tax Claims	N/A	None	None	(If applicable) 100%
N/A	DIP Claims	N/A	None	Approximate amount: \$16 Million	100%
N/A	Priority Non-Tax Claims	N/A	None	Cap Under Plan: \$4.75 Million; Approximate amount: \$1,107,929 (net of all of Nabors Claim but app. \$99,000)	100% of Allowed Claims

Class	Designation	Impairment Status	Voting Rights	Estimated Amount of Claims	Estimated Recovery
1	Senior Credit Facility Claims	Impaired	Entitled to Vote	App. \$146 Million	Receives Paydown/Refinancing Amount (App. \$35 Million) and Class A Units; TBD
2	Other Secured Claims	Impaired	Entitled to Vote	Despite Proofs of Claim totaling app. \$14 Million, Confirmation of Plan will result in these Claims being treated as General Unsecured Claims	Zero
3	Convenience Claims	Impaired	Entitled to Vote	Approximate amount: \$480,000	25%
4	General Unsecured Claims	Impaired	Entitled to Vote	Approximate Amount: \$24-\$25 Million	Litigation Trust Interests on account of Allowed Claims—a Pro Rata Share of Litigation Trust Beneficial Principal Amount; TBD
5	Commerce Unsecured Claims	Impaired	Entitled to Vote	Approximate amount: \$34 Million	Class B Units; TBD
6	Argo Secured Claim	Unimpaired	Deemed to Accept	Approximate Amount: \$75 Million	Retains collateral rights
7	Equity Interests	Impaired	Deemed to Reject	N/A	Extinguished

DECIDING HOW TO VOTE ON THE PLAN: All Holders of Claims are encouraged to read this Disclosure Statement, its exhibits, and the Plan carefully and in their entirety before, if applicable, deciding to vote either to accept or to reject the Plan. This Disclosure Statement contains important information about the Plan, considerations pertinent to acceptance or rejection of the Plan, and developments concerning the Chapter 11 Case.

A Ballot to be used for voting to accept or reject the Plan is enclosed with this Disclosure Statement and transmitted to all Holders of Allowed Claims entitled to vote on the Plan (the "Voting Classes"). The Holders of Allowed Claims entitled to vote on the Plan should carefully review the Ballot and the instructions thereon, and must execute the Ballot, and return it to the address indicated thereon by the deadline to enable the Ballot to be considered for voting purposes. The Ballot is for voting purposes only and does not constitute and shall not be deemed a Proof of Claim or an assertion of a Claim.

IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR VOTE MUST BE RECEIVED BY THE VOTING AGENT AT THE ADDRESS SET FORTH BELOW ON OR BEFORE THE **VOTING DEADLINE OF [__:__]P.M., PREVAILING CENTRAL TIME, ON [____], 2016**, UNLESS EXTENDED BY THE DEBTOR. **PLEASE NOTE: A FULL EXPLANATION OF THE VOTING REQUIREMENTS AND VOTING PROCEDURES IS FOUND IN ARTICLE IX OF THIS DISCLOSURE STATEMENT.**

EACH BALLOT ADVISES THAT (A) EACH HOLDER OF A CLAIM WHO HAS AFFIRMATIVELY VOTED TO ACCEPT THE PLAN AND (B) EACH HOLDER OF A CLAIM WHO DOES NOT VOTE TO ACCEPT OR REJECT THE PLAN AND IS A HOLDER OF A CLAIM IN A CLASS THAT HAS VOTED TO ACCEPT THE PLAN SHALL BE DEEMED TO HAVE CONSENTED TO THE RELEASE, INJUNCTION, AND EXCULPATION PROVISIONS SET FORTH IN ARTICLE XI OF THE PLAN AND UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASED AND DISCHARGED THE RELEASED PARTIES IDENTIFIED IN ARTICLE XI OF THE PLAN FROM ANY AND ALL CAUSES OF ACTION.

ARTICLE IX OF THIS DISCLOSURE STATEMENT PROVIDES ADDITIONAL DETAILS AND IMPORTANT INFORMATION REGARDING VOTING PROCEDURES AND REQUIREMENTS. PLEASE READ ARTICLE VIII OF THIS DISCLOSURE STATEMENT CAREFULLY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

THE DEBTOR, STRONGLY RECOMMENDS THAT YOU VOTE TO ACCEPT THE PLAN, WHICH HAS BEEN JOINTLY PROPOSED BY THE DEBTOR, APOLLO, COMMERCE, AND THE UCC. THE DEBTOR BELIEVES THAT THE PLAN MAXIMIZES THE VALUE OF THE DEBTOR'S ESTATE AND REPRESENTS THE BEST AVAILABLE ALTERNATIVE FOR COMPLETING THIS CHAPTER 11 CASE.

ARTICLE II BACKGROUND

2.1 The Debtor's Business

Whistler, a Delaware limited liability company, is engaged in the acquisition, exploration, development, and production of oil and natural gas properties located in offshore Gulf of Mexico. Whistler is headquartered in Houston, Texas, with seven full-time employees. Whistler utilizes third party providers for additional in-office and back office support. Whistler also engages third party providers to provide skilled and trained personnel in support of

shorebase and offshore production operations, such as: (i) a major service provider to provide day-to-day management over production operations; (ii) a project management provider for major repair and construction work; and (iii) other service providers to assist Whistler in meeting its health, safety, and environmental obligations under applicable law.

2.2 *The Debtor's Leasehold Interests Assets*

Whistler holds an interest in the following four oil and gas leases on the outer continental shelf (“OCS”) in the Gulf of Mexico. These leases include: (a) One Hundred Percent (100%) of the record title interest in Lease OCS-G 04940, Green Canyon Block 18, with a 74.64285% operating rights interest from 17,000’ TVDSS down to 25,000’ TVDSS therein, and with a 0.00000% operating rights interest from 25,000’ TVDSS down to 99,999’ TVDSS therein; (b) One Hundred Percent (100%) of the record title interest in Lease OCS-G 14021, Green Canyon Block 60, with a 55.00000% operating rights interest from 17,000’ TVDSS down to 25,000’ TVDSS therein, and with a 0.00000% operating rights interest from 25,000’ TVDSS down to 99,999’ TVDSS therein; (c) One Hundred Percent (100%) of the record title interest in Lease OCS-G 05809, Ewing Bank Blocks 944/988, with a 73.33333% operating rights interest in the S/2 of the S/2 of Ewing Bank Block 988 from 17,000’ TVDSS down to 25,000’ TVDSS therein, with a with a 0.00000% operating rights interest in the S/2 of the S/2 of Ewing Bank Block 988 from 25,000’ TVDSS down to 99,999’ TVDSS therein, and with a 0.00000% operating rights interest in all of Ewing Bank Block 944 from the surface down to 99,999’ TVDSS, and with a 0.00000% operating rights interest in the N/2 and the N/2 of the S/2 of Ewing Bank Block 988 from the surface to 99,999’ TVDSS; and (d) Forty-Five Percent (45%) of the record title interest in Lease OCS-G 34961, Green Canyon Block 19. Whistler currently has production operations and suspended drilling operations on Platform “A” located in the Green Canyon 18 block of the GOM.

Whistler currently produces 2,100 barrels per day in oil and gas production. Whistler’s current monthly gross revenue is approximately \$2,650,000 (“Gross Revenue”), which is subject to royalty obligations and quality adjustments, leaving a net revenue of approximately \$2,100,000 per month. The Gross Revenue, however, may further change on a monthly basis, depending on pricing and business interruptions that are outside Whistler’s control (*e.g.*, third party owned pipeline shut ins, equipment breakdowns, government orders, and weather).

As of December 2015, the Debtor had estimated net proved reserves of approximately 11.0 MMBoe, comprised of 9.3 Bcf of natural gas and 9.4 MMBbls of oil and condensate with a total net present value discounted at 10% (PV10) of \$92 Million (inclusive of asset retirement obligations) using then-current NYMEX prices.² The Debtor also has approximately \$75 Million on deposit in several USB accounts, which secures the decommissioning bonds for its oil and gas lease obligations. Such bonds are in favor of third parties, including the U.S. Government. Because this amount is on deposit as Collateral for the Argo Secured Claim, the funds are not available for use by the Debtor as a source of repayment of Claims of other Creditors. For further discussion please see Article 2.6 below.

² See discussions below regarding Debtor’s estimates of current fair market value.

2.3 *Debtor's History*

Whistler was founded by Mr. Scott Frankel in 2012 for the purpose of acquiring Gulf of Mexico producing properties. In 2013, Mr. Frankel conveyed his membership interest in Whistler to Frankel Green Canyon LLC. That same year, Frankel Green Canyon LLC ("Frankel Green"), Black Star Energy LLC ("Black Star"), Curtis Carver ("Carver"), Englehart Energy, Inc. ("Englehart Energy"), Bethancourt Oil and Gas Company ("Bethancourt Oil"), and Commerce Oil LLC ("Commerce") entered into an Amended and Restated Limited Liability Company Agreement (as amended, the "2013 LLC Agreement").³

As part of the 2013 LLC Agreement, Commerce, a subsidiary of Freepoint Commodities, LLC ("Freepoint"), became the supermajority member. The initial Board of Managers included Mr. Scott Frankel, who also served as President and Chief Executive Office, Robert Wichert, who was appointed as Chief Operating Officer and Executive Vice President, and a Commerce representative for the Board.

2.4 *Debtor's Management*

On April 28, 2016, Scott Frankel separated from Whistler, and his employment agreement was terminated and as of April 28, 2016 was no longer in force and effect. Being no longer employed by Whistler, Mr. Frankel also vacated his position as Chairman of the Board of Managers for Whistler. On May 6, 2016, the Board of Managers appointed Mr. Robert Wichert, who was the Chief Operating Officer, to also serve as Interim President and Chief Executive Officer. In May 2016, Whistler engaged the services of TDF Partners LLC ("TDF") to provide restructuring advice. Mr. Rich DiMichele of TDF was appointed as the Chief Restructuring Officer (and thereafter both he and TDF received Bankruptcy Court approval of their respective roles).

2.5 *Capital Structure*

(a) *Secured Notes*

In 2013, Whistler issued \$90 Million of senior secured Tranche A Notes pursuant to that certain Note Purchase Agreement dated as of July 11, 2013, by and among Whistler, as issuer, several Apollo entities as holders (Apollo Franklin Partnership, L.P., Apollo Centre Street Partnership, L.P., Apollo Service Opportunities Managed Account, L.P., Apollo Credit Opportunity Fund III AIV I LP, and ANS Holdings (WE), Ltd., collectively "Apollo"); and The Bank of New York Mellon, as Administrative Agent, (in its capacity as Administrative Agent, the "NPA Agent") (as heretofore amended, restated, supplemented or otherwise modified, the "Note Purchase Agreement"). The Note Purchase Agreement is secured by liens on substantially all of the assets owned by the Debtor. In October 2014, Whistler entered into the First Amendment to the Note Purchase Agreement. Whistler then issued Additional Tranche A Notes in the aggregate amount of \$45,788,034. Interest is at the rate of 14% and has been deferred. The maturity date under the Note Purchase Agreement was June 11, 2016.

³ The 2013 LLC Agreement was amended in July 2014 regarding the certain vesting schedule for Black Star, and then was amended in October 2014 for the change in capital contribution obligations of Commerce.

On May 19, 2016, Apollo provided a bridge loan to Whistler in the amount of \$500,000 to pay restructuring professionals and for other corporate purposes. As of May 2016, the Debtor's liability under the Note Purchase Agreement was \$125,500,000 plus accrued, unpaid interest and other costs.

Pursuant to the Note Purchase Agreement and the Guarantee and Collateral Agreement dated July 11, 2013 between Whistler and The Bank of New York Mellon, as the Collateral Agent for Apollo, Apollo holds a first lien on substantially all of the Debtor's assets, including the reserves, any production from such reserves, all cash, all deposit accounts, and any residual interest in the collateral securing the bonds for decommissioning obligations (such bonds are pledged to third parties).

(b) Unsecured Note

In June 2015, Whistler issued a Subordinated Promissory Note to Freepoint in the initial amount of \$15,000,000 ("Subordinated Note"). The Subordinated Note was amended two times (once in August 2015 to increase the amount to \$30,000,000 and a second time in November 2015 to increase the total amount to \$31,500,000). Freepoint later assigned the Subordinated Note to Commerce, its parent. The Subordinated Note was subject to that certain Subordination Agreement between Whistler, The Bank of New York Mellon, as administrative agent to Apollo, and Freepoint. The Subordinated Note is referred to as the "Junior Note" and the funds provided to Whistler were loaned on an unsecured basis. As of today, Whistler's liability under the Subordinated Note is \$31,500,000 plus interest and costs.

(c) Membership Interests

The Equity Interests in the Debtor are held in the form of membership interests issued pursuant to the 2013 LLC Agreement. Commerce holds 100% of the Preferred Units of membership interest and over 38% of Common Units. Commerce is also the Supermajority Unitholder under the terms of the 2013 LLC Agreement. Whistler, as such, must seek the consent or approval of Commerce prior to taking certain actions, which are enumerated in the 2013 LLC Agreement. The remaining Common Units are held by Frankel Green Canyon LLC, Black Star Energy LLC, Englehart Energy, Inc., Curtis Carver, Bethancourt Oil & Gas Company, and Ken Reed in both vested and unvested units. Apollo as well as Summit Partners Credit Fund, L.P. and certain affiliates⁴ hold vested warrants, none of which have been exercised and all of which are "out of the money."

2.6 *Other Significant Obligations.*

(a) Performance Bonds

Whistler is required to post certain bonds as per the Department of Interior, Bureau of Ocean Energy Management ("BOEM") requirements. Whistler also is required to have certain

⁴ The Summit Partners include Summit Investors I, LLC, Summit Investors I (UK), L.P., Summit Partners Credit Fund A-1, L.P. and Summit Partners Credit Offshore Intermediate Fund, L.P.

bonds as per the requirements under the acquisition documents with ExxonMobil and W&T Offshore, Inc. . The Debtor presently has a combination of bonds for BOEM, Exxon, and W&T in the amount of \$78,799,999, all underwritten by Argonaut Insurance Company (“Argo Surety”).

In 2015, BOEM required Whistler to post bonds for five (5) rights-of-way. Whistler posted bonds for all five (5) rights-of-way, but BOEM agreed to accept bonds for less than the total assessments for three (3) of the rights-of-way. BOEM then later made a demand on Whistler to post the incremental amounts for these three (3) under-secured rights-of-way so that the bonds posted equal the BSEE assessments for these three (3) rights-of-way. Subsequently Whistler posted such additional amount of \$1,859,000. Currently, Whistler has pledged \$75,499,998.64 in Cash Collateral for the benefit of Argo Surety under a certain General Indemnity Agreement dated July 3, 2013. Recently, Whistler received a proposed reassessment of its supplemental bonding obligations from the Department of Interior. The Interior Reassessment is discussed more fully below, but generally the Department of Interior Bureau of Safety and Environmental Enforcement (“BSEE”) proposed a reassessment of potential decommissioning obligations, which could require additional bonding in the net amount of \$32,162,000. Whistler has not received a demand from BOEM for additional supplemental bonding as of the filing of this Disclosure Statement. On October 20, 2016, representatives from Whistler and Apollo met with representatives from BSEE to present information that the Interior Reassessment is materially incorrect and should be reduced.

(b) Royalty Obligations

To maintain its Leasehold Interests, Whistler must, generally, either be conducting operations or paying royalties on production to the federal government (“Lessor Royalties”). Whistler pays monthly royalties to the federal government and remits such payments to the United States, through the Department of the Interior, Office of Natural Resources Revenue. Whistler is current in such obligations.

In addition to these Lessor Royalties, the Debtor’s properties are burdened by certain overriding royalty interests (ORRIs) in favor of Fisherman’s Petroleum and the Debtor’s immediate predecessors in title, namely Mobil Oil Exploration & Producing Southeast Inc. and W&T Offshore, Inc. The Lessor Royalties and the ORRIs have been paid throughout the Chapter 11 Case and the Debtor is current on these obligations.

ARTICLE III
EVENTS LEADING TO CHAPTER 11

3.1 *2015 Restructuring Transaction*

In late 2015, Whistler engaged with various parties to restructure Whistler’s debt and equity structure (“Restructuring Transaction”). A closing was scheduled for December 30, 2015. On that day, BSEE issued a shut in order (as described more fully below), and the transaction was not consummated.

3.2 *Shut Ins*

(a) January 2016 Shut In Due to Sheen

Throughout the fall of 2015, Whistler operations personnel had reported periodic sheens observed near the platform to the appropriate regulatory authorities following the Whistler OSRP (Oil Spill Response Plan). However, the source of the sheen was not determined. On December 30, 2015, Whistler was contacted by representatives of BSEE that Whistler's platform was being shut in, immediately, due to the BSEE's observation of a recurring "sheen" on the surface of the Gulf of Mexico waters in the vicinity of the platform. Whistler was informed that the shut in would last until Whistler could determine and rectify the source and cause of the sheen. After Whistler investigated the source of the sheen, and determined that it was not coming from the platform, BSEE lifted the shut in order for the platform during the first week in January 2016.

(b) Pipeline Shut Ins Due to Maintenance

In March 2016 and April 2016, the third party pipelines that carry Whistler's oil production and gas production from the platform were shut-in for maintenance for several weeks. This caused both gas production sales and crude oil production sales to be placed on hold for several weeks. On April 21, 2016, Whistler's production operations returned to normal production levels.

3.3 *Drilling Operations Suspended*

The Debtor and Nabors Offshore Corporation ("Nabors") entered into a platform drilling contract dated February 25, 2014 (as amended, the "Nabors Contract") for the use of Rig MODS 201 ("Nabors Rig"). The Drilling Rig is a platform rig, and was installed on the GC 18 platform. On March 10, 2016, there was a fatality of a Nabors' employee on the Nabors Rig. The incident was immediately reported to the BSEE. The incident resulted in a complete shutdown of drilling operations at the GC 18 platform and a temporary cessation of all production operations on the platform. On March 25, 2016, BSEE formalized this shutdown by issuing a "facility shut-in" Notification of Incident(s) of Non-Compliance, which suspending drilling operations. Production operations later resumed, and were not impacted by the March 25 notification. On March 30, 2016, the Debtor sent Nabors a "Notice of Force Majeure", putting Nabors on notice that Nabors was entitled to the force majeure rate for ten days (from March 11 to March 21) only as per the terms of the Nabors Contract and that BSEE's shut in order constituted an event of force majeure ("Force Majeure Event"), starting on March 11, 2016. The Debtor also reminded Nabors that until BSEE allowed recommencement of drilling operations, Nabors would not be entitled to its day rate.

3.4 *Termination of Hedges*

Whistler used to hedge no more than 80% of its production. Between December 2015, and April 2016, Whistler terminated its hedges with Apollo's consent, which was required because the hedges' value constituted Collateral under the Note Purchase Agreement. This consent of Apollo allowed more than \$18,000,000 in funding to be released to Whistler for use in

its Operations. No part of the amount of the released Collateral was used for payment of the amounts due under the Note Purchase Agreement Loan Documents, either interest or principal.

3.5 *Involuntary Petition Filed Against Whistler*

On March 24, 2016 (“Petition Date”), Romfor Supply Company d/b/a Premiere Fluids International, Adriatic Marine, L.L.C., Hydra Ops, LLC, Scientific Drilling International, Inc., and Patterson Services, Inc. d/b/a Patterson Rental Tools filed an involuntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* On May 6, 2016, HOS Port, LLC filed a joinder in the involuntary petition.. On April 18, 2016, Whistler filed an answer to the involuntary petition. On May 25, 2016, Whistler consented to the order for relief in this Chapter 11 Case.

ARTICLE IV KEY EVENTS DURING CHAPTER 11 CASE

Since the Petition Date, the Debtor has continued to operate its business and manage its properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The following is a general summary of this Chapter 11 Case.

4.1 *First Day Pleadings*

After consenting to the order for relief, and to minimize disruption to the Debtor’s operations, the Debtor filed certain motions and applications with the Bankruptcy Court on May 24, 2016 or shortly thereafter seeking certain relief summarized below. The relief sought in the “first day” pleadings facilitated the Debtor’s transition into a consensual chapter 11 and aided in the preservation of the Debtor’s value. The final orders entered by this Court on Debtor’s first day pleadings include the following:

- *Order for Relief* [Docket No. 59]
- *Final Order Granting Motion for Order (I) Deeming Utilities Adequately Assured of Future Performance; and (II) Establishing Procedures for Determining Requests for Additional Adequate Assurance Pursuant to Bankruptcy Code Section 366* [Docket No. 121]
- *Final Order Granting Motions for Authority to Pay or Honor Prepetition Obligations to Certain Critical Vendors* [Docket No. 122]
- *Final Order Granting the Revised Motion for Authority to Pay Prepetition Wages and Other Employee-Benefit Claims* [Docket No. 123]
- *Final Order Granting Motion for Authority to Pay Insiders* [Docket No. 124]
- *Final Order Authorizing Limited Use of Cash Collateral, Obtaining Post-Petition Credit Secured by Senior Liens, Granting Adequate Protection to Existing Lienholders* [Docket

No. 110] (“Final DIP Financing Order”).

4.2 *Post-petition Financing*

On March 26, 2016 the Court entered its *Interim Order Authorizing Limited Use of Cash Collateral, Obtaining Post-Petition Credit Secured by Senior Liens, and Granting Adequate Protection to Existing Lienholder* [Docket No. 70] and on June 10, 2016, the Court entered the Final DIP Financing Order. The Final DIP Financing Order authorizes the Debtor to borrow up to \$15,000,000 from the DIP Lender and granted the DIP Lender super-priority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code and the DIP Facility Liens, which was a first lien on substantially all assets of the Debtor (the DIP Facility Collateral). The DIP Facility Collateral was limited with respect to a portion of the Avoidance Actions and also Causes of Action against the Debtor’s officers and directors.

The Debtor has been operating under the Final DIP Order pursuant to a set of rolling budgets as provided for in the Final DIP Order. The most recent budget (“Cash Flow Budget”), which projects through December 31, 2016, is attached to this Disclosure Statement as **Exhibit C**.

4.3 *Retention of Professionals*

The Debtor also filed several applications and obtained authority to retain various professionals to assist the Debtor in carrying out their duties under the Bankruptcy Code as debtor-in-possession in this Chapter 11 Case. The Bankruptcy Court approved the retention and employment of the following advisors:

- Gardere Wynne Sewell, (“Gardere”) as counsel for the Debtor [Docket No. 219]
- Looper Goodwine P.C. (“Looper Goodwine”) as special regulatory counsel for the Debtor [Docket No. 126]
- TDF Partners, LLC with Richard DiMichele as Chief Restructuring Officer (“CRO”) to the Debtor pursuant to section 363 of the Bankruptcy Code [Docket No. 220].

On August 9, 2016, the Bankruptcy Court entered the an order pursuant to sections 105(a) and 331 of the Bankruptcy Code *Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Docket No. 268].

4.4 *Appointment of Official Committee of Unsecured Creditors*

On June 7, 2016, the Office of the United States Trustee appointed an official committee of Unsecured Creditors (the “Committee”), which included representatives from Adriatic Marine, LLC; C & G Boats; Premier Fluids; Pyramid Tubular Products L.P.; and Tesco Offshore Services Inc. On June 13, 2106, the Office of the United States Trustee appointed Bristow U.S. LLC and Schlumberger Technology Corporation to the Committee. The Court approved the

Committee's retention of Lugenbuhl, Wheaton, Peck, Rankin & Hubbard ("Lugenbuhl") as counsel for the Committee [Docket No. 206].

4.5 *Bankruptcy Schedules and Statement of Financial Affairs*

On July 6, 2016, the Debtor timely filed its Schedules of Assets (A and B), Exempt Property (C), Creditors Holding Secured Claims (D), Creditors Holding Unsecured Priority Claims (E), Creditors Holding Unsecured Nonpriority Claims (F), Executory Contracts and Unexpired Leases (G), Codebtors (H). The Debtor amended its schedules on August 11, 2016.

On July 6, 2016, the Debtor timely filed its Statement of Financial Affairs [Docket No. 181 & 182]. The Debtor amended its Statement of Financial Affairs on August 11, 2016 and August 18, 2016.

4.6 *Executory Contracts*

The Debtor was a party to several executory contracts, including contracts with oilfield service providers. The Debtor obtained orders approving the rejection of numerous executory contracts, including contracts with Nabors (see Article 4.8 below for a discussion of the disputes between the Debtor and Nabors), Cameron International Corporation, Oilfield Instrumentation USA, Inc., National Oilwell Varco, LP, Quail Tools, LP, Halliburton Energy Services, Inc., Empirica, LLC, IPT Global, LLC, M-I LLC, and Schlumberger Technology Corporation. The Debtor's position is that under section 365(g) of the Bankruptcy Code, the Claims of these parties arising from rejection of their contracts are General Unsecured Claims. A number of these Creditors have Filed Claims asserting priority status under sections 503(b) and 507(a)(3) of the Bankruptcy Code. To the extent any of these Creditors makes a Claim other than a General Unsecured Claim, the Debtor or the Reorganized Debtor, as applicable, expects to litigate the Allowance of such Claims.

With respect to the Leasehold Interests, and subject to (i) the reservation by all Entities of all rights regarding whether or not the Leasehold Interests are or are not Executory Contracts or Unexpired Leases and (ii) the occurrence of the Effective Date, the vesting of the Leasehold Interests and maintenance thereof by the Reorganized Debtor under the Plan shall be effective with consent of the United States, which may be granted or denied in accordance with the agency's authority under existing regulations and applicable non-bankruptcy law, if and as necessary. To obtain approval from the United States Department of Interior if and as necessary for the vesting of the Leasehold Interests and maintenance thereof by the Reorganized Debtor, the Reorganized Debtor shall, among other things, comply with all financial assurance requirements in accordance with existing regulations and applicable non-bankruptcy law, with full reservation of all rights. Any reference to the Debtor in bonds maintained in connection with the Leasehold Interests ("Lease Bonds") shall, if and as necessary, be modified to mean the Reorganized Debtor upon Interior's approval of the vesting and Bankruptcy Court approved assumption of the Leasehold Interests to the Reorganized Debtor. The Debtor and Reorganized Debtor shall execute any document(s), at Interior's request, if and as necessary, to amend the Lease Bonds in a manner consistent with this paragraph.

4.7 *Status of the Erato Well*

During the Force Majeure Event, the Debtor and Nabors committed to provide additional details associated with improved operations for a Performance Improvement Plan (“Joint PIP”) as required by BSEE before the drilling suspension order would be lifted. During BSEE’s review of the Joint PIP, a weather emergency occurred on June 3, 2016 associated with Tropical Storm Colin. BSEE allowed the Debtor to commence limited operations to make the Erato Well, the Nabors Rig, and the GC 18 platform storm-safe. On June 14, 2016, the Joint PIP was approved by BSEE, and BSEE lifted its drilling order suspension, ending the Force Majeure Event.

Because of the weather emergency and potential future tropical conditions in the Gulf of Mexico, the Debtor requested BSEE’s approval to place a storm packer in the Erato Well. BSEE, however, informed the Debtor that the Debtor either could re-commence drilling operations or temporarily abandon the Erato Well. The Debtor determined that temporary abandonment of the Erato Well was necessary. Nabors provided the drilling rig services to complete the temporary abandonment of the Erato Well. The Debtor has paid Nabors its agreed rates for making the GC 18 platform storm-safe, and the temporary abandonment of the Erato Well.

4.8 *Dispute with Nabors Offshore Corporation*

On June 17, 2016, Nabors filed its motion to compel the Debtor to assume or reject the Nabors Contract. The Debtor filed its response on June 20, 2016, informing the Court that the Nabors Contract was a burdensome contract, and the Debtor consented to the rejection of the Nabors Contract. The Court entered an order rejecting the Nabors Contract with an effective date of rejection as of June 20, 2016. Though the Nabors Contract has been rejected, the Nabors Rig remains on the Debtor’s GC 18 platform. In October, the demobilization of the Nabors Rig commenced, and likely could take several weeks to complete.

On September 26, 2016, Nabors filed/submitted a Proof of Claim in the amount of \$4,680,165.80 (“Nabors Claim”) (which was assigned Claim No. 119). The Nabors Claim was filed as a Secured Claim based on the mineral lien filed on August 16, 2016 in the real property records of Terrebonne Parrish, Louisiana. Nabors also alleges that part of its Secured Claim is entitled to treatment as a Gap Claim in the amount of \$2,303,831.13. In addition, Nabors filed a separate motion for administrative expenses in an unliquidated amount. Nabors argues that its demobilization costs (“Demob Costs”) are Administrative Claims under section 503(b) of the Bankruptcy Code, and also argues that it has unpaid invoices relating to post-May 25 services under the Nabors Contract.

The Debtor disputes that Nabors is entitled to a Gap Claim in the amount filed, and asserts that at most, Nabors is entitled to a Gap Claim (subject to all defenses) of less than \$100,000. During the period between the Petition Date and the Order for Relief (the “Gap Period”), Nabors and the Debtor were still under a Force Majeure Event as per the terms of the Nabors Contract. Because the Joint PIP required by BSEE was not approved by BSEE until June 14, 2016 (weeks after the Order for Relief), and because the *force majeure* was the fault of

Nabors, Nabors is not entitled to claim the day rate under the Nabors Contract during the Gap Period. Further, even if Nabors would be entitled to a Gap Claim as it filed, which is denied, the Gap Claim could not be an Allowed Claim. Nabors received preferential transfers as defined in section 547(b) of the Bankruptcy Code. Under section 502(d) of the Bankruptcy Code a claim shall be disallowed if the holder of such claim received an avoidable transfer, unless and until the creditor repays the avoidable transfer amount to the estate. The Avoidance Action against Nabors, without consideration of any possible defenses Nabors might assert is in excess of \$5 Million. Gap Claims are to be disallowed as provided under section 502(d) of the Bankruptcy Code, so the Nabors Gap Claim (and Unsecured General Claim) even if valid (which is denied) should be Disallowed.

The Debtor also disputes that Nabors is entitled to an Administrative Claim for its Demob Costs or its post-petition services under the rejected Nabors Contract. Since the Nabors Contract was a pre-petition contract and has been rejected, the demobilization imposed upon Nabors by the Nabors Contract cannot be given the same status as though the demobilization was contracted for post-petition. Therefore the Demob Costs are not entitled to Administrative Claim status as costs and expenses necessary to preserve the Debtor's estate as required under section 503(b) of the Bankruptcy Code, and neither are the other post-petition costs under the Nabors Contract, except to the extent the Debtor on a post-petition basis required and asked for Nabors to provide services (for example to temporarily abandon the Erato Well). While the Debtor believes that Nabors may be able to show the right to a Gap Claim of approximately \$99,000 (again, subject to all defenses), and conceivably can establish a right to a small Administrative Claim, the Debtor believes that litigation over the question of Nabors' entitlement to a Gap and/or Administrative Claim as submitted will result in the Nabors' Gap Claim being Disallowed and the Claim for Demob Costs, if anything, being Allowed as a General Unsecured Claim. The Debtor reserves its rights with respect to any damages incurred arising from, related to, or in connection with the Nabors Contract, including, but not limited to, the Force Majeure Event, the Avoidance Actions related to any payments made to Nabors within the ninety days prior to the Petition Date, or any other Avoidance Actions or Causes of Action. Nabors also owes the Debtor approximately \$375,000 for fuel, food and transport provided by the Debtor to Nabors' employees post-petition.

4.9 *Claims Bar Date*

On August 16, 2016 the Court entered its *Order Establishing Deadlines for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [Docket No. 280], setting the deadline for filing Proofs of Claims for all non-governmental Claims, including the bar date to file Gap Claims and Claims asserted under section 503(b)(9) of the Bankruptcy Code, as of September 26, 2016 (the "Non-Governmental Unit Claim Bar Date"); setting the deadline for filing Proofs of Claims for applicable Governmental Units as of November 21, 2016 (the "Governmental Unit Claim Bar Date"); and establishing procedures for filings of Proofs of Claim and the provisions of appropriate notice of the Non-Governmental Unit Claim Bar Date and Governmental Unit Claim Bar Date to potential claimants

4.10 *Committee Litigation*

Under the Final DIP Financing Order, the Committee was granted standing to file a complaint pursuant to Bankruptcy Rule 7001 challenging or objecting to the extent, priority, validity, perfection, amount, or allowability of Apollo's and Commerce's Claims or security interests, arising out of or related to the pre-petition Claim documents or the transactions related thereto (collectively, a "Challenge"). The Committee was granted sixty (60) days after June 15, 2016 (rather than the date of entry of the Final DIP Order or any prior date that could have been applicable) to bring any Challenge.

On August 12, 2016, the Committee initiated an the UCC Adversary Proceeding against the Bank of New York Mellon; Commerce Oil, LLC; Apollo Franklin Partnership, LP; Apollo Special Opportunities Managed Account, LP; Apollo Credit Opportunity Fund III AIV I LP; ANS Holdings (WE) Ltd.; Summit Investors I (UK), LP; Summit Investors I, LLC; Summit Partners Credit Fund A-1, L.P.; Summit Partners Credit Offshore Intermediate Fund, L.P.; Gamma Commodities Series 2; Frankel Green Canyon LLC; Black Star Energy, LLC; Englehart Energy, Inc.; Bethancourt Oil & Gas Company; Curtis W. Carver; Kenneth Reed; Scott A. Frankel; Robert E. Wichert; Thomas Englehart; Robert Bethancourt; and Stephen Tillery (collectively, the "Defendants") in Adversary Case 16-1037.

The UCC Adversary Proceeding seeks and alleges, amongst other things, a declaratory judgment that the 2015 Restructuring Transaction closed, breach of contract action, equitable subordination, lender liability, breach of fiduciary duty, and turnover of property. In connection with the UCC Adversary Proceeding, the UCC filed a Motion to Withdraw Reference of the Adversary Proceeding alleging that certain of the claims against the Defendants are non-core, state law claims for which the Committee is entitled to a jury trial. Following the execution of a Plan Term Sheet (described below), the parties agreed to abate the UCC Adversary Proceeding and extend the submission deadline for the Motion to Withdraw Reference in the District Court in order to work collectively to Confirm the Plan, which if Confirmed requires that within two (2) days after the occurrence of the Effective Date pleadings to cause dismissal with prejudice of the claims asserted within the UCC Adversary Proceeding.

4.11 *Plan Term Sheet*

The Plan Proponents executed a Plan Term Sheet effective September 26, 2016, which was an abbreviated outline of the structure of a plan of reorganization that could be supported, by the parties, assuming approval of a disclosure statement. The parties opted not to draft a formal plan support agreement, and the Plan Term Sheet is an expression of intention of the parties to submit and support a plan that has now become the Plan. The Plan Term Sheet does not represent a vote for acceptance of the Plan or a solicitation by any party of votes for acceptance of the Plan. However, since execution of the Plan Term Sheet the Plan Proponents have worked together to formulate the Plan and in providing assistance to the Debtor in formulating the Debtor's Disclosure Statement. To the extent there are differences between the Plan and the Plan Term Sheet, the Plan governs.

4.12 *Operations and Estate Assets*

As mentioned above the Debtor has operated under the budget as approved by the terms

of the Final DIP Financing Order. According to Exhibit C, the combination of Cash generated by the Debtor's operations and funds loaned by the DIP Lender is sufficient for the debtor to maintain operations through December 2016, by which time the Debtor hopes the Plan will have been Confirmed and the Effective Date shall have occurred.

Though the nature and value of the Debtor's Assets are discussed more fully below, in Article VII, the Debtor's assets are generally categorized and valued (where possible) as follows:

Leasehold Interests	\$50 Million
Causes of Action:	
(a) Avoidance Actions	\$10-\$17 Million
(b) Frankel Claims	Unknown
(c) Other Causes of Action (breach of contract, third party claims)	Unknown
Executory Contracts: (seismic agreements)	Unknown
Personal Property: (office and IT equipment)	Unknown (Minimal)
Bond Collateral	\$75,568,895 (Net value currently Zero)

Briefly, the aggregate amount of the Senior Credit Facility Claims and DIP Facility Claims is approximately \$160 Million. The Administrative Claims and Priority Claims could total approximately \$3-\$6 Million. The Commerce Unsecured Claim is approximately \$34 Million, and the other Claims (not including defenses, all of which are reserved) could approximate \$25-\$28 Million. The effect of the amount by which the Debtor's debts exceed its Assets is discussed more fully below in Article VII.

ARTICLE V SUMMARY OF THE PLAN

5.1 Introduction

THE SUMMARY OF THE PLAN SET FORTH BELOW IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF THE PLAN. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PROVISIONS OF THE PLAN AND THE SUMMARY CONTAINED HEREIN, THE TERMS OF THE PLAN WILL GOVERN. CREDITORS ARE ENCOURAGED TO THOROUGHLY REVIEW THE TERMS OF THE PLAN AND TO SEEK INDEPENDENT LEGAL OR FINANCIAL ADVICE REGARDING THE TERMS OR TREATMENT CONTAINED THEREIN.

5.2 Overview of the Plan

The Plan provides for the payment of unclassified Allowed Administrative Claims and

Allowed Priority Claims, and five (5) separate classifications of Claims and Equity Interests.

5.3 *Administrative Claims, Professional Fees, and Priority Tax Claims*

As provided in section 1123(a) of the Bankruptcy Code, Administrative Claims (including Professional Fee Claims) under section 507(a)(2) of the Bankruptcy Code, Gap Claims under 507(a)(3) of the Bankruptcy Code, and Priority Tax Claims under section 507(a)(8) of the Bankruptcy Code are not classified for purposes of voting on, or receiving Distributions under the Plan. Holders of Administrative Claims (including Professional Fee Claims), Gap Claims, and Priority Tax Claims are not entitled to vote on the Plan but, rather, are treated separately in accordance with Article II of the Plan and under sections 1129(a)(9)(A) and (C) of the Bankruptcy Code. There are no Priority Claims under section 507(a)(1) of the Bankruptcy Code or Priority Claims under sections 507 (a)(6) or (a)(7) of the Bankruptcy Code. In the event there are Allowed Claims under sections 507(a)(4) and/or (5) of the Bankruptcy Code, such Non-Tax Priority Claims will not be classified as a Class for treatment, but any such Allowed Claims will be paid as provided below.

(a) Timing and Treatment of Administrative Claims and Professional Fees

Each Administrative Claim that is an Allowed Claim shall be paid in full in Cash on or as soon as practicable after the latest of (i) the Effective Date; (ii) thirty (30) days after the date that an Administrative Claim becomes an Allowed Administrative Claim; and (iii) such other date as is agreed to between the Debtor and the Holder of such Allowed Administrative Claim. Notwithstanding the foregoing, Ordinary Course Administrative Claims shall be paid either (i) in the ordinary course of business in accordance with the terms and conditions of any agreements related thereto, or (ii) as otherwise agreed among the Debtor and the Holder of such Ordinary Course Administrative Claim. Additionally, any fees due to the U.S. Trustee pursuant to section 1930 of title 28 of the United States Code will be paid as they become due.

All Professionals seeking payment of a Professional Fee Claim shall file their respective final applications for allowances of compensation for services rendered and reimbursement of expenses incurred through the Effective Date **within thirty (30) days after the occurrence of the Effective Date**. If Allowed, such Professional Fee Claim shall be paid in full in such amounts as are Allowed by the Bankruptcy Court (i) on the date such Professional Fee Claim becomes Allowed, or as soon thereafter as is practicable or (ii) upon such other terms as may be mutually agreed upon between the Holder of such Professional Fee Claim and the Debtor or, on and after the Effective Date, the Reorganized Debtor.

An Administrative Claim with respect to which notice has been properly filed and served shall become an Allowed Administrative Claim only to the extent Allowed by Final Order not made the subject of appeal, or as such Claim is settled, compromised, or otherwise resolved.

HOLDERS OF ADMINISTRATIVE CLAIMS THAT ARE REQUIRED TO FILE AND SERVE A REQUEST FOR PAYMENT OF SUCH ADMINISTRATIVE CLAIMS BY THE ADMINISTRATIVE BAR DATE THAT FAIL TO DO SO SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH

ADMINISTRATIVE CLAIMS AGAINST THE DEBTOR OR ITS RESPECTIVE PROPERTY OR THE REORGANIZED DEBTOR.

Total Professional Fee Claims through the Effective Date have not been finalized, but can only be estimated at this time. However, the Debtor has projected the Professional Fee Claims through December 31, 2016 within Exhibit C. There could be Professional Fee Claims over and above those shown on Exhibit C, but any such excess Professional Fee Claims that would remain unpaid as of the date on which the Plan Proponents expect the effective Date to occur would not be material. The Debtor expects that any non-budgeted Professional Fee Claims that would remain unpaid would not exceed \$350,000. The Effective Date shall be conditioned upon the total amount of Allowed and unpaid Administrative Claims (other than any such Claim held by Apollo) being less than \$3,000,000. The Debtor projects that unpaid Administrative claims should not exceed \$1 Million (this assumes that the Nabors Administrative Claim will be Disallowed).

(b) Treatment and Payment of Allowed Priority Non-Tax Claims

Except to the extent that a Holder of an Allowed Priority Non-Tax Claim agrees to a less favorable treatment, (i) Allowed Gap Claims shall be paid in cash and in full on the later of (a) the Effective Date, and (b) the date on which each such Gap Claim becomes an Allowed Gap Claim by Final Order, and (ii) remaining Non-Tax Priority Claims, if any, shall be paid in cash and in full on the later of (a) the Effective Date, and (b) the date on which each such Non-Tax Priority Claim becomes an Allowed Non-Tax Priority Claim by Final Order. Such payment(s) shall be in full and final satisfaction, settlement, and release of and in exchange for each such Claim(s). To the extent that any such Non-Tax Priority Claim exceeds the maximum amount allowed as a Priority Unsecured Claim pursuant to sections 507(a)(4) or (5), the excess amount of the Claim shall be treated as an Allowed General Unsecured Claim.

(c) Treatment of Allowed Priority Tax Claims

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, and release of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code, and shall be paid in equal monthly payments of principal plus simple interest, with such interest calculated as required under applicable law for such Priority Tax Claims, for a term of forty-eight (48) months after the later of (i) the Effective Date and (ii) the date on which such Priority Tax Claim is Allowed (“Payment Trigger Date”), with the maturity date by which all payments due to be no later than the last day of the forty-eighth month after the Payment Trigger Date. At the discretion of the Reorganized Debtor payment in full of the total balance due on any such Claim can be made without penalty.

(d) United States Trustee Fees

All fees payable under 28 U.S.C. § 1930 shall be paid in Cash in full by the Debtor as they come due pending the Effective Date and thereafter shall be paid by the Reorganized Debtor

as they come due until the issuance of the Final Decree. The Confirmation Order may provide that the Reorganized Debtor reserves the right to request the Chapter 11 Case be administratively closed after the Effective Date, pending the Final Decree. The Debtor has been paying its ongoing expenses in the ordinary course of business and is current on its payment obligations to the United States Trustee.

5.4 Treatment of Allowed DIP Claims

Unless otherwise agreed by the DIP Lender, on the Effective Date the Allowed DIP Facility Claims shall be paid in full in cash with proceeds of the Exit Facility. The DIP Lender shall have no further obligation to pay or otherwise fund any Professional fees or disbursements or Carve-Out Expenses (as such term is defined in the DIP Financing Orders) after the Effective Date. The Reorganized Debtor shall be authorized to take any action necessary or appropriate, with the approval of the DIP Lender and the Exit Facility Lender, to refinance or replace, or amend and restate the DIP Credit Agreement to facilitate the effectiveness of the Exit Facility. The Holder of the DIP Facility Claims shall not be required to File a Proof of Claim or any application seeking recognition of its Claim or any part of its Claim. The DIP Facility Claims are Allowed Claims.

5.5 Classification and Treatment of Claims and Interests

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including voting, Confirmation, and Distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date.

Class	Claims and Interests	Status	Voting Rights
Class 1	Senior Credit Facility Claims	Impaired	Entitled to Vote
Class 2	Other Secured Claims	Impaired	Entitled to Vote
Class 3	Convenience Claims	Impaired	Entitled to Vote
Class 4	General Unsecured Claims	Impaired	Entitled to Vote
Class 5	Commerce Unsecured Claims	Impaired	Entitled to Vote
Class 6	Argo Secured Claim	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 7	Equity Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

5.6 *Claims Analysis*

(a) *Unclassified Claims*

Holders of Allowed (i) Administrative Claims, including Cure Claims and Professional Fee Claims, subject to the condition of Confirmation that the total amount of Allowed Administrative Claims (other than any such Claim held by Apollo) being less than \$3,000,000 and (ii) Priority Non-Tax Claims, including Gap Claims, subject to the condition of Confirmation that the total amount of Allowed Priority Non-Tax Claims being less than \$4,750,000 will receive 100% distribution on account of their Claims.

Creditors filed approximately \$3,658,199 in Priority Non-Tax Claims. A schedule of the filed Priority Non-Tax Claims is attached as **Exhibit B-1**. The schedule reflects that the Debtor's estimate of Priority Non-Tax Claims is substantially similar to the filed Claims except for the following two Claims: (i) \$529,111 was filed by Apollo which will be treated as part of the Class 1 Senior Credit Facility Claim and (ii) \$2,303,831 was filed by Nabors, which is Disputed by the Debtor because Nabors is not entitled to its day rate during the Gap Period and the Debtor estimates the Nabors Priority Non-Tax Claim to be \$99,200. The Debtor did not originally schedule any amounts for Gap Claims, so no Gap Claim can be an Allowed Gap Claim without a timely Proof of Claim having been submitted. Certain Creditors submitted Proofs of Claim timely, and though they did not fill out the official Claim form properly to mark part of the Claim as a Gap Claim, the Creditors attached invoices showing part of the Claims arising from services or good performed or provided during the Gap Period, such that a portion of the Claim could be considered a Gap Claim. To avoid litigation that the Debtor believes would probably result in the Bankruptcy Court allowing amendments of these Claims, the Debtor proposes to separate out the portions of such Claims for which these Gap Period invoices have been submitted and treating those amounts as Gap Claims. As is the case with the Nabors Gap Claim, the Debtor reserves all defenses. The schedule reflects that the Debtor estimates thirty-four (34) Creditors with Gap Claims in the total amount of \$1,107,929.22 (again, subject to defenses). A schedule of these Gap Claims is attached as **Exhibit B-2**.

Holders of Allowed Priority Tax Claims, if any, will receive equal monthly payments of principal plus simple interest, with such interest calculated as required under applicable law for such Priority Tax Claims, for a term of forty-eight (48) months. The Debtor has no information upon which to base a conclusion that there are any Priority Tax Claims. None have been filed as of the date of this Disclosure Statement.

On the Effective Date, except as otherwise provided for herein, (i) the existing Equity Interests shall be deemed extinguished, cancelled and of no further force or effect, and (ii) the obligations of the Debtor under any agreements governing the Equity Interests and any indebtedness or obligation of the Debtor with respect to the Equity Interests shall be discharged without further act or action under any applicable agreement, law, regulation, order, or rule and without any action on the part of the Bankruptcy Court or any Person. The following table provides a summary of the filed and scheduled Claims for discussion purposes only and does not reflect any opinion by the Debtor or Plan Proponents of any Claims that are Allowed or Disallowed:

Type Claim	Plan Estimate	Filed/Scheduled	Whistler Estimate
Admin. Claims	Plan Cap: \$3.0 Million	TBD ⁵	TBD
Priority Non-Tax Claims/Gap Claims	Plan Cap: \$4.75 Million	\$3,658,199.42 (Proofs of Claim— None Scheduled)	\$1,107,929.22
Priority Tax Claims	\$0	\$0	\$0
Senior Credit Facility Claims	See Below	\$143,661,055.55 ⁶	\$143,661,055.55
Other Secured Claims	\$0 ⁷	\$14,264,219.83	\$12,792,861.00 ⁸
Convenience Claims	\$120,105	\$639,952.22	\$480,421.94 ⁹
General Unsecured Claims	Unknown	\$14,415,935.16	\$11,252,117.29 ¹⁰
Commerce Unsecured Claims	See Below	\$34,559,583.33	\$34,559,583.33
Argo Secured Claim	See Below ¹¹	\$75,568,895.10	\$75,568,895.10

⁵ Nabors filed a motion for Administrative Claim in an unliquidated amount for demobilization costs. For the reasons discussed above, Nabors is not entitled to an Administrative Claim and any Claim for demobilization costs should be treated as a General Unsecured Claim. Hydra Ops, LLC also filed a motion for Administrative Claim in the amount of \$13,161.92 for legal fees and expenses incurred in connection with its participation in the filing of the involuntary petition. The Debtor will update its Claims analysis once the November 4, 2016 deadline for filing Administrative Claims has passed.

⁶ The Bank of New York Mellon as Agent for the Holders of the Senior Credit Facility Claims also filed a Proof of Claim for the amounts owed under the Senior Credit Facility. Such amounts are not included in this Claims analysis, as this Claim is deemed a duplicate of the proof of Claim Filed by Apollo.

⁷ As discussed below in the Liquidation Analysis, the Debtor's liquidation value, excluding any recoveries from Causes of Action, is estimated to be approximately \$50 million, far less than the amounts owed to the Holders of Senior Credit Facility Claims. As a result, the value of the Collateral purportedly underlying the Other Secured Claims based on the Louisiana Oil Well Lien Act, which is also Note Purchase Agreement Collateral and DIP Facility Collateral (securing Claims of approximately \$160 Million) is insufficient to Collateral value to these Holders. Therefore all such Lien Claims, which if they were in fact Secured by Collateral of a value sufficient to create Secured Claims under section 506(a) of the Bankruptcy Code and Bankruptcy Rule 3012 would be Other Secured Claims shall be classified for voting, allowance and treatment as Class 4 General Unsecured Claims.

⁸ This is the Debtor's estimate of amount—these Claims shall be treated as General Unsecured Claims. The Debtor scheduled these Creditors as Unsecured Creditors, not as Secured Creditors.

⁹ This amount includes both filed and scheduled Claims, but does not include any amounts for Critical Vendors paid during the pendency of the Chapter 11 Case or Disputed Claims.

¹⁰ This amount includes both filed and scheduled Claims as well as the Unsecured portion of the Argo Claims, but does not include any amounts for (i) Critical Vendors paid during the pendency of the Chapter 11 Case, (ii) Other Secured Claims, (iii) Disputed Claims and (iv) Convenience Claims.

¹¹ Argo Surety has filed a claim in the amount of \$78,799,998.64 for Bonds posted by the Debtor in favor of the BOEM, of which \$75,568,895.10 is fully collateralized. Argo Surety also includes as statutory bases for its Claims sections 503 and 507(a)(8) of the Bankruptcy Code, neither of which are applicable to the Argo Claims. Pursuant to the Plan, Argo Surety will retain its security interest in the Bond collateral. The remaining amount of the Argo Surety Claim that is not fully collateralized (\$3,211,103.54) is a contingent and unliquidated claim and treated as a Class 4 General Unsecured Claim.

(b) Senior Credit Facility Claims

Senior Credit Facility Claims are held by Apollo and include any and all Claims arising under, on account of or in any way relating to the Note Purchase Agreement and related documents, including the Note Purchase Agreement, the Note Purchase Agreement Collateral Documents, and any and all related security agreements and other documents and agreements evidencing obligations of the Debtor arising under or related to the Note Purchase Agreement. As of the Petition Date, Apollo has asserted Senior Credit Facility Claims of \$143,661,055.55. On the Effective Date, the Reorganized Debtor and Apollo will enter into the Exit Facility and the proceeds of the Exit Facility shall be used, to among other things, make payment toward the amount of the Senior Credit Facility Claims, in the approximate amount of \$35,000,000 (the “Paydown/Refinancing Payment”). Apollo shall also be issued new membership interest in the Debtor (the “Series A Units”) and shall receive one hundred percent (100%) of any Reorganized Debtor distributions until Apollo has received the sum of (i) the Unreturned Capital, *plus* (ii) any interest or fees that would have been payable on account of the Unreturned Capital as of the date of such distribution had such Unreturned Capital been principal under the Exit Facility (together the “Preferred Amount”). The Unreturned Capital amount is estimated to be approximately \$103–\$108 Million. Under the Plan on the basis of the Exit Facility Agent Discretion, the Litigation trustee can be directed to pay over to Apollo, on account of the Preferred Amount, proceeds from Exit Facility Collateral that is Litigation Trust Collateral.

(c) Other Secured Claims

Other Secured Claims are Secured Claims other than the Senior Credit Facility Claims and the DIP Facility Claims, to the extent the Bankruptcy Court issues a Final Order determining that such Claim is a Secured Claim. As mentioned, certain Creditors have asserted Louisiana Oil Well Lien Act Claims against the Debtor pursuant to La. Rev. Stat. 9:4861, *et seq.* for goods and services provided to the Debtor in connection with the Debtor’s oil and gas operations. Further, such Creditors have filed notices of perfection, continuation or maintenance of such liens under sections 362(b)(3) and 546(b) of the Bankruptcy Code. As of the filing of the Disclosure Statement, twenty-eight (28) Creditors have filed Other Secured Claims aggregating approximately \$14,260,000. The Debtor estimates the value of these Claims to be approximately \$12,790,000. A schedule of such Creditors is attached as **Exhibit B-3**. The Debtor is unaware of any other Holders of Other Secured Claims. As discussed herein, the liquidation value of the Debtor’s Leasehold Interests, which would be the only collateral Securing these Lien Claims is estimated to be approximately \$50 Million, far less than the amounts owed to the Holders of Senior Credit Facility Claims plus the DIP Facility Claims. Therefore, there is no underlying collateral value supporting these Lien Claims and therefore these Claims shall be classified for voting, allowance and treatment as Class 4 General Unsecured Claims. As a result, these Creditors and the amount of their corresponding Claims should be added to the Class 4 General Unsecured Claims for purposes of estimating the pool of Class 4 Claims. As reflected on **Exhibit B**, the Claims submitted as Secured Claims are being added to the Class 4 General Unsecured Claims amount. In fact, Confirmation shall constitute a finding and conclusion that such Lien Claims are General Unsecured Claims and the Effective Date is conditioned upon such a finding and conclusion by the Bankruptcy Court.

(d) Convenience Claims

The Plan includes treatment of Convenience Claims which are Allowed General Unsecured Claims in an amount equal to or less than \$25,000.00, or (b) an Allowed General Unsecured Claim in a greater amount that is voted by the Ballot of the Holder of such Claim (i) to accept the Plan and (ii) to have such Claim Allowed in the amount of \$25,000.00. The Debtor estimates the current total amount of Convenience Claims to be \$480,000, which includes sixty-three (63) Creditors, as compared to \$639,952 in Claims for seventy-three (73) Creditors having Claims in amounts equal to or less than \$25,000 that were either filed or scheduled by the Debtor. The difference in the Debtor's estimate is attributed to excluding any amounts for critical vendors paid during the pendency of the Chapter 11 Case or Disputed Claims. A schedule of the current list of Convenience Claims is reflected on **Exhibit B-4**. Holders of Allowed Convenience Claims will receive payment in an amount equal to twenty-five percent (25%) of such Allowed Convenience Claims. The Debtor estimates that payouts to this Class shall be approximately \$120,000.

(e) General Unsecured Claims

While the Debtor has not yet conducted a thorough claim-by-claim analysis, a preliminary breakdown of the General Unsecured Claims reveals that twenty-one (21) Creditors that are not Convenience Class Claims or Other Secured Claims filed Proofs of Claim asserting Unsecured Claims, all of which were scheduled by the Debtor. In addition, the Debtor scheduled Unsecured Claims for twenty (20) Creditors that did not file Proofs of Claim. The Debtor estimates the current dollar amount of General Unsecured Claims (excluding those Claims filed as Lien Claims) to be \$11,252,117.29, which includes thirty-two (32) Creditors that have filed Unsecured Claims or were scheduled by the Debtor. The nine (9) Creditors excluded from the Debtor's estimate were all scheduled by the Debtor and have either been paid or their Claim amounts appear under related Creditor entities that filed Proofs of Claim for the same amounts. A schedule of the current list of General Unsecured Claims is reflected on **Exhibit B-5**. The Debtor has also included the Unsecured portion of the Argo Surety Claims in the analysis.

As discussed above, Claim amounts for Creditors that filed Other Secured Claims shall be classified for voting, allowance and treatment as Class 4 General Unsecured Claims. As a result, the Debtor estimates Class 4 Claims totaling \$24,044,978 for sixty (60) Creditors. Holders of General Unsecured Claims are treated as Class 4 claimants and shall be entitled to vote on the Plan. The estimated recovery on General Unsecured Claims is unknown at this time.

One pre-Petition Creditor, Frank's International was scheduled as having an Unsecured Claim in the amount of \$338,460.98. However at some time Frank's International exercised a setoff of amounts it owed the Debtor for pipe that had been purchased by Whistler but not delivered. Frank's International has not filed a Proof of Claim. The Debtor reserves all rights under sections 362, 547 and/or 553 of the Bankruptcy Code as against Frank's International arising out of this setoff, and litigation related to such setoff may cause Frank's International to have a Claim to be treated as a Class 2 or Class 4 Claim. Accordingly, the Debtor has included this amount in the estimation of Class 4 Claims.

(f) Commerce Unsecured Claims

The amount of the Commerce Unsecured Claim as of the Petition Date was approximately \$34,559,583.33 and is evidenced by the Subordinated Note. In exchange for its General Unsecured Claims outstanding under the Subordinated Note, Commerce shall receive Series B Units. The Reorganized Debtor shall make no distributions to or on account of the Series B Units until after payment in full to Apollo of the Preferred Amount.

(g) Argo Claims

The Argo Claims are the contingent and unliquidated indemnity Claims of Argo as may exist against the Debtor under a certain General Indemnity Agreement dated July 3, 2013, related to the issuance by Argo Surety of certain supplemental and area wide bonds in favor of the United States Department of the Interior (BOEM), Mobil Oil Exploration and Producing Southwest Inc. and W&T Offshore, Inc. Argo Surety submitted Proof of Claim No. 43 as (a) a Secured Claim, Secured by the Debtor's Cash Collateral in the approximate amount of \$75,568,895.10, and (b) an Unsecured Claim in the amount of \$3,211,103.54. Argo also includes as statutory bases for its Claims sections 503 and 507(a)(8) of the Bankruptcy Code, neither of which are applicable to the Argo Claims. Pursuant to the Plan, Argo Surety will retain its security interest in the Debtor's Cash Collateral that is pledged as security for the Bonds; therefore, the Argo Secured Claim is Unimpaired and will be treated as a Class 6 Claim. The Unsecured portion of the Argo Claims that is not secured by the Debtor's Cash Collateral is deemed Impaired and will be treated as a Class 4 Claim.

5.7 *Plan Classification and Treatment Summary*

1. CLASS 1 – Senior Credit Facility Claims

(a) *Classification:* Class 1 consists of all Senior Credit Facility Claims, which as of the Confirmation Date shall be deemed Allowed.

(b) *Treatment:* Apollo, as the Holder of the Allowed Class 1 Senior Credit Facility Claims shall receive, on or as soon as practicable after the Effective Date, (i) payment in Cash of the Paydown/Refinancing Payment, which shall be payable first to all outstanding reasonable professional fees and expenses of legal counsel and financial advisors to Apollo that are part of the Senior Credit Facility Claims, and second to the aggregate of the balance due under the Senior Credit Facility; and (ii) the Series A Units. On and after the Effective Date, upon exercise of the Exit Facility Agent Discretion directing the Litigation Trustee to make payment of net proceeds of Litigation Trust Collateral to Apollo toward the Preferred Amount, Apollo shall receive such Distributions for the account of the Reorganized Debtor toward the Preferred Amount on account of it being the Holder of the Series A Units.

(c) *Voting:* Class 1 is Impaired under the Plan. Holders of Allowed Claims in Class 1 are entitled to vote to accept or reject the Plan.

2. CLASS 2 – Other Secured Claims

(a) *Classification:* Class 2 consists of Other Secured Claims.

(b) *Treatment:* Except to the extent that any entity entitled to payment of any Allowed Other Secured Claim agrees to less favorable treatment, the Holder of an Allowed Other Secured Claim whose Claims are secured by Collateral with value not subsumed by the Collateral value securing the Senior Credit Facility Claims and the DIP Facility Claims, shall be issued new secured notes by the Reorganized Debtor in an amount equal to the net equity value of the underlying Collateral securing such Claim, with payment to be made at an interest rate of six and a half percent (6.5%) per annum, simple interest, with an amortization of ten (10) years and a maturity date of four (4) years after the Effective Date.

(c) *Voting:* Class 2 is Impaired under the Plan. Holders of Allowed Claims in Class 2 are entitled to vote to accept or reject the Plan. To the extent that the Collateral securing any Other Secured Claim is not of a value sufficient to provide equity value over the amount of the Senior Credit Facility Claims plus the DIP Facility Claims, such Claim(s) shall be classified for voting, allowance and treatment as General Unsecured Claims.

3. CLASS 3 – Convenience Claims

(a) *Classification:* Class 3 consists of all Allowed Convenience Claims.

(b) *Treatment:* The Holder(s) of the Allowed Convenience Claims shall receive payment by the Reorganized Debtor of an amount, in cash, equal to twenty-five percent (25%) of such Allowed Convenience Claims, in full and final satisfaction, settlement, release, and compromise of and in exchange for each Allowed Class 3 Claim. Payment shall be made on the Distribution Date with respect to each Allowed Class 3 Claim. Notwithstanding the foregoing, Holders of Allowed Class 3 Claims who vote (i) to accept the Plan and (ii) to opt into treatment as Class 4 Claims shall have their Claims treated as Allowed Class 3 Claims.

(c) *Voting:* Class 3 is Impaired under the Plan. Holders of Allowed Convenience Claims in Class 3 are entitled to vote to accept or reject the Plan.

4. CLASS 4 – General Unsecured Claims

(d) *Classification:* Class 4 consists of all General Unsecured Claims.

(e) *Treatment:* On the Distribution Date each of the Holders of Allowed General Unsecured Claims shall receive a Pro Rata Share of Litigation Trust Interests. The Holders of Allowed Class 4 General Unsecured Claims shall on account of their Litigation Trust Interests be entitled to receive, from the Litigation Trust Distributions the net proceeds of the Litigation Trust Assets that are not Litigation Trust Collateral. All Litigation Trust Distributions shall be payable first upon and on account of the aggregate Litigation Trust Beneficial Interest Principal Amount and after payment in full thereof, toward payment of the Claims Return. Upon payment to the Holders of the Litigation Trust Interests of the aggregate Litigation Trust Beneficial Interest Principal Amount together with the Claims Return, any right, title and interest of the Litigation Trust with respect to the Litigation Trust Assets will automatically terminate and any such remaining Litigation Trust Assets will revert to the Reorganized Debtor and shall

be Exit Facility Collateral if the Exit Facility should remain outstanding. The Litigation Trustee shall not make Litigation Trust Distributions from Litigation Trust Loan Collateral without the written consent of Apollo if there is an outstanding balance owned under the Litigation Trust Loan as of such proposed Distribution.

IN THE EVENT OF REJECTION OF THE PLAN BY THE HOLDERS OF CLASS 4 CLAIMS (I) THE ORRI SHALL NOT BE CONVEYED TO THE LITIGATION TRUSTEE BY MEANS OF THE ORRI CONVEYANCE OR OTHERWISE, (II) THE NPI WILL NOT BE CONVEYED TO THE LITIGATION TRUSTEE BY MEANS OF THE NPI CONVEYANCE OR OTHERWISE, AND (III) SIXTY PERCENT (60%) OF THE REMAINING AVOIDANCE ACTION PROCEEDS SHALL BE EXIT FACILITY COLLATERAL, SUCH THAT ONLY FORTY PERCENT (40%) OF THE REMAINING AVOIDANCE ACTION PROCEEDS (AS OPPOSED TO 45%) SHALL NOT BE EXIT FACILITY COLLATERAL.

(f) *Voting:* Class 4 is Impaired under the Plan. Holders of Allowed General Unsecured Claims in Class 4 are entitled to vote to accept or reject the Plan.

5. CLASS 5 – Commerce Unsecured Claims

(a) *Classification:* Class 5 consists of all Commerce Unsecured Claims, which as of the Confirmation Date shall be deemed Allowed.

(b) *Treatment:* The Holder(s) of the Class 5 Claims shall on the Effective Date receive, in full and final satisfaction, settlement, release, and compromise of and in exchange for each Allowed Class 4 Claim, the Series B Units.

(c) *Voting:* Class 5 is Impaired under the Plan. Holders of Allowed Commerce Unsecured Claims in Class 5 are entitled to vote to accept or reject the Plan.

6. CLASS 6 – Argo Secured Claim

(a) *Classification:* Class 6 consists of all the Argo Secured Claim.

(b) *Treatment:* On the Effective Date, the rights of Argo in respect of the Argo Secured Claim, regardless of the extent to which the Argo Secured Claim is an Allowed Claim because of section 502(e)(1) of the Bankruptcy Code, will be Unimpaired under section 1124(1) of the Bankruptcy Code.

(c) *Voting:* Class 6 is Unimpaired under the Plan. Holders of the Class 6 Argo Secured Claim are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan.

7. CLASS 7 – Equity Interests

(a) *Classification:* Class 7 consists of all Equity Interests.

(b) *Treatment:* On the Effective Date, all Class 7 Allowed Equity Interests shall be deemed cancelled, and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and there shall be no distribution on account of such Interests.

(c) *Voting:* Class 7 is Impaired under the Plan. Holders of Equity Interests in Class 7 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan.

5.8 *Means for Implementation of the Plan*

(a) Plan Funding

Distributions under the Plan, and the Reorganized Debtor's operations post-Effective Date will be funded from the following sources:

(i) Exit Facility

On the Effective Date, the Reorganized Debtor shall enter into the Exit Facility, the final form and substance of which shall be acceptable to the Reorganized Debtor and Apollo, including without limitation the amendment and restatement of the Note Purchase Agreement Documents and an amendment, restatement, modification or purchase of the DIP Facility Documents. The Exit Facility shall be Secured by a valid, first priority Security Interest in, to and upon the Note Purchase Agreement Collateral, the DIP Facility Collateral and the Litigation Trust Collateral, except to the extent the Litigation Trust Loan shall have a first priority Lien in, to and upon the Litigation Trust Loan Collateral. Proceeds of the Exit Facility shall be used for (i) payment of the DIP Repayment Amount, (ii) to make the Paydown/Refinancing Payment, (iii) the Working Capital Amount, and (iv) to provide future loan funding availability for the CapEx Amount.

(ii) Other Plan Funding; the DIP Facility

Other than as set forth in Article VI.A.1 of the Plan, all Cash necessary for the Debtor and Reorganized Debtor to make payments required by the Plan shall be obtained from the Debtor's Cash balances on hand, Cash from business operations, and from the DIP Facility as and if approved by the DIP Lenders, and as necessary and approved by Apollo, from the Working Capital Amount.

(b) Authorization and Issuance of New Equity

On the Effective Date, the Reorganized Debtor shall authorize and issue the New Equity, in accordance with the Plan and the Reorganized Debtor's amended and restated operating agreement. The New Equity in the Reorganized Debtor shall be issued as follows: (i) Apollo or its Affiliates will receive the Series A Units, (ii) Commerce or its Affiliate will receive the Series B Units, and (iii) at the discretion of the board of directors of the Reorganized Debtor and Apollo, new or existing management will receive Series C Units that will be characterized as

profit interests for tax purposes and be subject to vesting, forfeiture and recapture provisions as determined by the board of directors of the Reorganized Debtor. Following the Effective Date, distributions from the Reorganized Debtor to its members on account of the New Equity will be made in the following order of priority: (i) Series A Unitholders will receive one hundred percent (100%) of the distributions until the Series A Unitholders have received the Preferred Amount and (ii) after the receipt of the Preferred Amount by the Series A Unitholders, all distributions by the Reorganized Debtor shall be made (1) eighty-seven and 875/1000 percent (87.875%), in the aggregate, to Series A Unitholders, (2) seven and 125/1000 percent (7.125%), in the aggregate, to Series B Unitholders, and (3) five percent (5%) to the holders of Series C Units. To the extent authorized Series C Units are not issued and until Series C Units are issued and outstanding, ninety-two and ½ percent (92.5%) of distributions to be made to such authorized but unissued Series C Units will inure to the benefit of the Series A Unitholders and seven and ½ percent (7.5%) of distributions to be made to such authorized but unissued Series C Units will inure to the benefit of the Series B Unitholders. **For avoidance of doubt, the Reorganized Debtor shall make no distributions to or on account of the Series B Units or Series C Units until after payment in full of the Preferred Amount.**

Issuance of the Series A Units, Series B Units and Series C Units (if any) shall constitute issuance of one hundred percent (100%) of the New Equity in the Reorganized Debtor and shall be deemed issued, or in the case of the Series C Units, authorized to be issued, on the Effective Date. The issuance of the Series A Units, Series B Units and Series C Units will all be subject to the terms of the limited liability company agreement and is authorized without the need for any further corporate action or without any further action by the Debtor or the Reorganized Debtor, as applicable, except as regards the actual issuance of the Series C Units.

Except as otherwise provided in the Plan, on or as soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall issue all securities, notes, instruments, certificates, and other documents required to be issued pursuant to the Plan.

(c) Restructuring Transactions

The Debtor or the Reorganized Debtor, as applicable, and all parties in interest shall take any actions as may be necessary or appropriate to effectuate the terms of the Plan. The actions taken by the Debtor or the Reorganized Debtor, as applicable, to implement the Plan may include: (i) the execution, delivery, adoption, and/or amendment of appropriate agreements or other documents of restructuring, conversion, disposition, or transfer containing terms that are consistent with the terms of the Plan, this Disclosure Statement, and any Plan Documents and that satisfy the applicable requirements of applicable state law and any other terms to which the applicable parties may agree; (ii) the execution, delivery, adoption, and/or amendment of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan, this Disclosure Statement, and any ancillary documents and having other terms for which the applicable parties may agree; (iii) the filing of appropriate certificates of formation, merger, consolidation, dissolution, or conversion pursuant to applicable state law, including but not limited to an amended certificate of formation and limited liability agreement with the appropriate governmental authorities; (iv) the cancellation of membership units and warrants; and (v) all

other actions that the Debtor or the Reorganized Debtor, as applicable, determine to be necessary, desirable, or appropriate to implement, effectuate, and consummate the Plan or the restructuring transactions contemplated by the Plan, including making filings or recordings that may be required by applicable state law in connection with the restructuring transactions.

Upon the Effective Date, the Governance Documents shall be amended and restated, and all parties receiving new Series A Units and Series B Units (and all persons to whom such parties may sell their equity in the future and all persons who purchase or acquire equity from the Reorganized Debtor in future transactions, including without limitation any Person who receives issued Series C Units) shall be required to become parties to an operating agreement providing for (a) the number of board members; (b) the ability to designate board members; (c) distributions; (d) certain consent rights of Apollo; and (e) other standard provisions to be negotiated in good faith between the Reorganized Debtor, Commerce and Apollo.

(d) Corporate Action

As of the Effective Date, the Reorganized Debtor may operate its businesses free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and Confirmation Order. In conformity with applicable bankruptcy and non-bankruptcy law, the Reorganized Debtor shall cause to be filed with all appropriate governmental agencies appropriate restated articles of incorporation, restated by-laws, as the case may be, to the extent necessary under the Bankruptcy Code and as permitted by applicable non-bankruptcy law. Such restated articles of incorporation, restated by-laws, restated articles of organization, and/or restated operating agreements, as the case may be, will include a provision prohibiting the issuance of non-voting equity securities. On the Effective Date, all matters provided for under the Plan that would otherwise require approval of the Debtor, or its respective managers, officers, or directors, including, without limitation, the adoption and effectiveness of the restated articles of incorporation, restated by-laws, restated articles of organization, and/or restated operating agreements, as the case may be, and the election or appointment of officers, directors, and/or managers, as the case may be, of the Reorganized Debtor as provided for under the Plan, shall be deemed to have occurred and shall be in effect from and after the Effective Date without any requirement of further action by the Reorganized Debtor or its respective managers, officers, or directors.

The Reorganized Debtor in its sole discretion, shall be responsible for preparing or causing to be prepared and filing all tax returns required to be filed by the Debtor following the Effective Date and distributing Schedules K-1 to Holders of Equity Interests; (ii) the Reorganized Debtor shall be entitled to participate in all tax proceedings with respect to the tax returns of the Debtor following the Effective Date to the extent such proceedings could adversely affect the Reorganized Debtor; and (iii) the Reorganized Debtor shall be responsible for and shall bear all costs and expenses incurred in connection with preparing and filing of such tax returns and preparing and mailing of Schedules K-1, and for the conduct of any such tax proceeding.

The board of directors of the Reorganized Debtor shall initially have five (5) members, acceptable to Apollo, as follows: (i) the Chief Executive Officer of such entity, (ii) three board members appointed by Series A Unitholders and (iii) one Board member appointed by Series B

Unitholders, who shall initially be an observer without any board voting rights, provided that the Series B Unitholders shall have membership voting rights and be entitled to change the status of its designee, from an observer to a director and from a director to an observer, from time to time on written notice. Upon the Effective Date or within thirty (30) days thereafter, the Reorganized Debtor shall appoint a new Chief Executive Officer, who shall be selected by the board of directors on or after the Effective Date after consultation with Apollo, the Litigation Trustee, Commerce and management of the Reorganized Debtor.

(e) Dissolution of Board of Managers of the Debtor

As of the Effective Date, the existing Board of Managers of the Debtor shall be dissolved without any further action required on the part of the Debtor or the Debtor's officers, directors, managers, shareholders, and members and any remaining officers, directors, managers, or managing members of any Debtor shall be dismissed without any further action required on the part of any such Debtor, the Equity Holders of the Debtor, the officers, directors, and managers, as applicable, of the Debtor, or the members of the Debtor.

(f) Employment, Retirement, and Other Agreements and Employee Compensation Plans.

(i) Employment Agreements

Though the Debtor asserts that any and all employment, severance (change in control), retirement, indemnification, or other agreements with their pre-Effective Date managers, officers, and employees ("Employment/Service Agreements") have either terminated on their own terms or have been terminated by action of the Board of Managers, and Confirmation shall include and constitute such a finding, conclusion and holding, out of an abundance of caution all Employment/Service Agreements shall automatically be deemed rejected, as of the Petition Date in accordance with the provisions of Article VII of the Plan. The Reorganized Debtor may enter into new employment arrangements and/or change in control agreements with the Debtor's officers who continue to be employed after the Effective Date; provided, however, that to enter into or to obtain the benefits of any such employment agreement, such executive officer must contractually waive and release all pre-existing claims, including those arising from pre-existing employment, change in control, or other employment-related agreements and/or benefits under certain pre-existing compensation and benefit arrangements as against the Debtor, the Reorganized Debtor, Apollo, Commerce, the UCC and those parties who are released parties under Article XI sections C., D, and F of the Plan. On or after the Effective Date, the Reorganized Debtor may adopt, approve, and authorize the new employment arrangement and/or change in control agreement with respect to such officers of the Reorganized Debtor.

(ii) Other Incentive Plans and Employee Benefits

On and after the Effective Date, the Reorganized Debtor shall have the sole discretion to (i) amend, adopt, assume, and/or honor, in the ordinary course of business or as otherwise provided herein, any contracts, agreements, policies, programs, and plans assumed pursuant to Article VII of this Plan for, among other things, compensation, pursuant to the terms thereof or

hereof, including any incentive plan, 401(k) plan, health care benefits, disability benefits, deferred compensation benefits, savings, severance benefits, retirement benefits, welfare benefits, workers' compensation benefits, life insurance, and accidental death and dismemberment insurance for the managers, officers, and employees of the Debtor who served in such capacity from and after the Petition Date, and (ii) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising prior to the Petition Date.

(iii) Disclosure as Required by Section 1129(a)(5) of the Bankruptcy Code

The Plan Proponents will, through either the Plan Supplement or prior to Ballot Deadline provide notice to parties in interest of: (i) the identity and affiliations of any individual proposed to serve as an officer, director of the Reorganized Debtor as of the Effective Date; (ii) the identity of any Insider that will be employed by the Reorganized Debtor and the nature of such Insider's compensation as of the Effective Date.

(g) Effectuating Documents; Further Transactions

On and after the Effective Date, the Reorganized Debtor and its respective directors, members, trustees, officers, and managers as authorized by the Post-Effective Date Corporate Governance documents shall consistent therewith be authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan in the name of and on behalf of the Reorganized Debtor, without the need for any approvals, authorizations, or consents, except for those expressly required pursuant to the Plan, or any further notice to or action, order, or approval of the Bankruptcy Court.

(h) Exemption from Certain Taxes and Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall 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. Such exemption specifically applies to: (1) the creation of any mortgage, deed of trust, Lien, or other security interest; (2) the making or assignment of any lease or sublease; (3) any Restructuring Transaction; and/or (4) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan.

(i) D&O Tail Insurance Policies

As of the Effective Date, the Reorganized Debtor shall purchase a D&O Insurance Tail

Policy providing tail coverage under a directors' and officers' liability insurance policy with a term of two years for their current and former officers, directors, trustees, and members containing the same coverage that exists under the Debtor's current D&O Insurance Policies. After the Effective Date, the Reorganized Debtor shall not terminate or otherwise reduce the coverage under any directors' and officers' insurance policies, including the D&O Insurance Tail Policy in effect on and after the Effective Date, with respect to conduct occurring prior thereto, and all officers, directors, trustees, managers, and members of the Debtor who served in such capacity at any time before the Effective Date shall be entitled to the full benefits of any such D&O Insurance Policies for the full term of such Policies regardless of whether such officers, directors, trustees, or members remain in such positions on or after the Effective Date.

(j) Vesting of Assets and Causes of Action

On and after the Effective Date, all of the property and assets of the Debtor and of the Estate under section 541(a) of the Bankruptcy Code shall vest in the Reorganized Debtor, subject to the terms of this Plan requiring transfer of the Litigation Trust Assets to the Litigation Trust. Unless any of the Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in this Plan or a Bankruptcy Court Final Order, the Litigation Trust shall receive any and all Litigation Trust Assets, including without limitation the Assigned Causes of Action, which shall include but not be limited by those Causes of Action listed on the Retained Causes of Action list attached to the Plan as **Exhibit A**. The Litigation Trustee, with the consent of Apollo, which shall not be unreasonably withheld, shall determine whether to bring, settle, release, compromise, or enforce such Assigned Causes of Action (or decline to do any of the foregoing), and shall not be required to seek further approval of the Bankruptcy Court for such action. With respect to the Frankel Claims the Litigation Trustee shall not be required to seek such consent from Apollo. In making a determination whether bring, settle, release, compromise, or enforce such Assigned Causes of Action (or decline to do any of the foregoing), the Litigation Trust shall consider the best interests of the Litigation Trust Beneficiaries and the holder of the Exit Facility, and the obligations of the Litigation Trust under the Litigation Trust Loan. **No Entity may rely on the absence of a specific reference in this Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Litigation Trust will not pursue any and all available Causes of Action against it. The Reorganized Debtor and the Litigation Trust expressly reserve all rights to prosecute any and all Causes of Action against any Entity that constitutes Property of the Estate, except as otherwise provided in this Plan. 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 THE PLAN, THE SCHEDULES, OR ANY OTHER DOCUMENT FILED WITH THE BANKRUPTCY COURT SHALL IN NO MANNER WAIVE, ELIMINATE, MODIFY, RELEASE, OR ALTER ANY RIGHT OF THE LITIGATION TRUST TO COMMENCE, PROSECUTE, DEFEND AGAINST, SETTLE, AND REALIZE UPON ANY RIGHTS, CLAIMS, CAUSES OF ACTION, DEFENSES, OR COUNTERCLAIMS THAT THE DEBTOR HAS, OR MAY HAVE, AS OF THE EFFECTIVE DATE.**

Except as otherwise specifically provided in the Plan, all property vested in the

Reorganized Debtor shall as of the Effective Date be free and clear of all Liens, Claims and interests of any type or nature, except such as are provided for in this Plan. Specifically, only the following pre-Effective Date Liens, Claims, interests, rights, covenants, agreements, terms and conditions as are provided for herein shall be retained and be binding upon the Reorganized Debtor and/or the Litigation Trust after the Effective Date: (i) the Exit Facility Liens and DIP Facility Liens; (ii) Liens as otherwise as provided for in the Plan, if any; and (iii) Liens as may exist under and in connection with any assumed Executory Contract or Unexpired Lease.

(k) Delivery of Distributions and Undeliverable or Unclaimed Distributions.

(i) Delivery of Distributions in General

Except as otherwise provided herein, the Debtor, Reorganized Debtor or Litigation Trustee, as applicable, shall make Distributions to Holders of Allowed Claims on the applicable Distribution Date at the address for each such Holder as indicated on the Debtor's and/or Reorganized Debtor's records as of the date of any such Distribution, or, if the Holder has an Allowed Claim and has submitted a Proof of Claim, to the address on such Proof of Claim. If a Holder holds more than one Claim in any one Class, all Claims of the Holder will be aggregated into one Claim and one Distribution will be made with respect to the aggregated Claim amount.

(ii) Minimum; De Minimis Distributions

No Cash payment of less than One Hundred and No/100ths Dollars (\$100.00) ("Minimum Distribution Amount"), in the reasonable discretion of the Reorganized Debtor or the Litigation Trustee, as applicable, shall be made to a Holder of an Allowed Claim on account of such Allowed Claim, but with respect to Litigation Trust Distributions, such shall be aggregated over time until the distribution to any such Litigation Trust Beneficiary amounts to at least the Minimum Distribution amount.

(iii) Undeliverable Distributions and Unclaimed Property

In the event that any Distribution to any Holder is returned as undeliverable, no Distribution to such Holder shall be made unless and until the Reorganized Debtor or the Litigation Trustee, as applicable, has determined the then current address of such Holder, at which time such Distribution shall be made to such Holder without interest unless such Distribution shall be of all or part of the Claims Return; *provided*, that such Distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six months from the date the Distribution is made, if not delivered. After such date, all unclaimed property or interests in property shall revert (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) to the Reorganized Debtor or the Litigation Trust, as applicable, automatically and without need for a further order by the Bankruptcy Court and the Claim of any Holder to such property or interest in property, to the extent of such undeliverable Distribution shall be released, settled, compromised, and forever barred.

(iv) Manner of Payment Pursuant to the Plan

Any payment in Cash to be made pursuant to the Plan shall be made at the election of the Reorganized Debtor or the Litigation Trustee, as applicable, by check or by wire transfer, at the sole and exclusive discretion of the Reorganized Debtor or the Litigation Trustee, as applicable.

5.9 *Treatment of Executory Contracts and Unexpired Leases*

(a) Assumption and Rejection

On the Effective Date, except as otherwise provided herein, all Executory Contracts or Unexpired Leases will be deemed rejected in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than: (1) those that are identified on the Schedule of Assumed Executory Contracts and Unexpired Leases contained in the Plan Supplement; (2) those that have been previously assumed or rejected by a Final Order; (3) those that are the subject of a motion to assume or reject Executory Contracts or Unexpired Leases that is pending on the Confirmation Date; (4) those that are subject to a motion to assume, or reject an Executory Contract or Unexpired Lease pursuant to which the requested effective date of such assumption or rejection is after the Effective Date; or (5) those that are otherwise assumed pursuant to the terms herein.

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the assumptions or rejections of such Executory Contracts or Unexpired Leases as provided under the Plan or the Schedule of Assumed Executory Contracts and Unexpired Leases contained in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated, assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Any motions to assume Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by a Final Order of the Bankruptcy Court on or after the Effective Date. Unless otherwise provided in this Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated pursuant hereunder. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

(b) Rejection Claims

Rejection Claims, if any, must be Filed or submitted in accordance with the order of the Bankruptcy Court approving such rejection or within thirty (30) days after the date of entry of such order, whichever occurs first. Any Rejection Claims not timely submitted within such time shall be automatically Disallowed, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtor, the Estate or property of the foregoing, without the need for

any objection by the Debtor or the Reorganized Debtor and without the need for any further notice to, or action, order, or approval of the Bankruptcy Court. Claims arising from the rejection of the Debtor's Executory Contracts or Unexpired Leases shall be classified either as Convenience Claims or as General Unsecured Claims and shall be treated in accordance with Article III of this Plan, as applicable. Notwithstanding anything to the contrary herein, prior to the Effective Date, the Debtor may amend its decision with respect to the rejection of any Executory Contract or Unexpired Lease.

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtor under such contracts or leases. In particular, notwithstanding any nonbankruptcy law to the contrary, the Reorganized Debtor expressly reserves and does not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the contracting Debtor or the Reorganized Debtor, as applicable, from counterparties to rejected or repudiated Executory Contracts.

(c) Cure of Assumed Executory Contracts and Unexpired Leases

Any Cure and/or Cure Claims, including any monetary defaults under an Executory Contract and Unexpired Lease, shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure in Cash on the Effective Date, such other date on which the assumption of such Executory Contract or Unexpired Lease by the Debtor or Reorganized Debtor is approved by Final Order, or, subject to the limitations described below, on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the Cure or (2) any other matter pertaining to assumption, any Cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption.

With respect to each of the Executory Contracts or Unexpired Leases assumed under the Plan, the Debtor shall designate through the Cure Notice, which shall be served on all affected counterparties to such Executory Contracts or Unexpired Leases assumed or to be assumed, a proposed Cure, and the assumption of such Executory Contract or Unexpired Lease shall be conditioned upon the disposition of all issues with respect to the Cure. **If there is no amount proposed as a Cure Amount within the the Schedule of Assumed Executory Contracts and Unexpired Leases in the Plan Supplement or within the Cure Notice, the Cure with respect the Executory Contracts or Unexpired Leases to be assumed the Cure for such Executory Contracts or Unexpired Leases shall be Zero Dollars (\$0), subject to the determination of a different Cure pursuant to the procedures set forth herein and in the Cure Notice.** Except with respect to Executory Contracts and Unexpired Leases for which the Cure is Zero Dollars (\$0), the Cure shall be satisfied by the Reorganized Debtor by payment of the Cure amount in Cash on the later of (i) thirty (30) days following the occurrence of the Effective Date or as soon as reasonably practicable thereafter; or (ii) for any Cures subject to dispute, thirty (30) days after the underlying Cure dispute is resolved, or on such other terms as may be ordered by the Bankruptcy Court or agreed upon by the parties to the applicable Executory Contract or Unexpired Lease without any further notice to or action, order, or approval of the Bankruptcy

Court.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the date that the Debtor assumes such Executory Contract or Unexpired Lease. Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

No later than three (3) days after the Debtor files the Schedule of Assumed Executory Contracts and Unexpired Leases (or any amendments thereof) and the Cure Notice, the Debtor shall serve upon counterparties to such Executory Contracts and Unexpired Leases a Cure Notice that will (i) notify the counterparty of the proposed assumption, (ii) list the applicable Cure, if any, set forth on the Schedule of Assumed Executory Contracts and Unexpired Leases, (iii) describe the procedures for filing objections to the proposed assumption or assumption and assignment of the applicable Executory Contract or Unexpired Lease, (iv) describe the procedures for filing objections to the proposed Cure of default in the applicable Executory Contract or Unexpired Lease, and (v) explain the process by which related disputes will be resolved by the Bankruptcy Court. If no objection is timely received, (a) the non-Debtor party to the Executory Contract or Unexpired Lease to be assumed shall be deemed to have consented to the assumption of the applicable Executory Contract or Unexpired Lease and shall be forever barred from asserting any objection with regard to such assumption, and (b) the proposed Cure shall be controlling, notwithstanding anything to the contrary in any applicable Executory Contract or Unexpired Lease or other document as of the date of the filing of this Plan, and the non-Debtor party to an applicable Executory Contract or Unexpired Lease shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting, collecting, or seeking to collect any additional amounts relating thereto against the Debtor or the Reorganized Debtor, or their property.

Notwithstanding anything to the contrary in the Plan, prior to the Effective Date, the Debtor, with approval of Apollo, may amend its decision with respect to the assumption of any Executory Contract or Unexpired Lease and provide a new notice amending the information provided in the applicable notice. In the case of an Executory Contract or Unexpired Lease designated for assumption that is the subject of a Cure Objection which has not been resolved prior to the Effective Date, the Debtor or the Reorganized Debtor, as applicable, may designate such Executory Contract or Unexpired Lease for rejection at any time prior to the payment of the Cure.

(d) Insurance Policies

All of the Debtor's insurance policies and any agreements, documents, or instruments relating thereto, are treated as and deemed to be Executory Contracts under the Plan. On the Effective Date, and notwithstanding anything in the Plan that could be to contrary the Debtor and Reorganized Debtor shall be deemed to have assumed all insurance policies and any

agreements, documents, and instruments related thereto, whether or not such policies, agreements, documents and instruments related thereto are listed on the Schedule of Assumed Executory Contracts and Unexpired Leases.

(e) Federal Leases

With respect to the Leasehold Interests, and subject to (i) the reservation by all Entities of all rights regarding whether or not the Leasehold Interests are or are not Executory Contracts or Unexpired Leases and (ii) the occurrence of the Effective Date, the vesting of the Leasehold Interests and maintenance thereof by the Reorganized Debtor under the Plan shall be effective with consent of the United States, which may be granted or denied in accordance with the agency's authority under existing regulations and applicable non-bankruptcy law, if and as necessary. To obtain approval from the United States Department of Interior if and as necessary for the vesting of the Leasehold Interests and maintenance thereof by the Reorganized Debtor, the Reorganized Debtor shall, among other things, comply with all financial assurance requirements in accordance with existing regulations and applicable non-bankruptcy law, with full reservation of all rights. Any reference to the Debtor in bonds maintained in connection with the Leasehold Interests ("Lease Bonds") shall, if and as necessary, be modified to mean the Reorganized Debtor upon Interior's approval of the vesting and Bankruptcy Court approved assumption of the Leasehold Interests to the Reorganized Debtor. The Debtor and Reorganized Debtor shall execute any document(s), at Interior's request, if and as necessary, to amend the Lease Bonds in a manner consistent with this paragraph.

5.10 *Claims Objection*

(a) Prosecution of Objections to Claims

Except as otherwise provided in the Plan, the Debtor, up to the Effective Date and the Reorganized Debtor on and after the Effective Date, shall have the exclusive authority to file objections, settle, compromise, withdraw or litigate to judgment objections to Administrative Claims, Gap Claims, other Non-Tax Priority Claims, Priority Tax Claims, Class 3 Convenience Claims and Other Secured Claims, with the Debtor's rights to be expressly subject to the approval of Apollo. Before the Effective Date the Debtor, and on and after the Effective Date the Litigation Trustee shall have such authority with respect to Class 4 General Unsecured Claims, subject to the approval of Apollo if a settlement or compromise of such objection(s) in any way affects an Avoidance Action. If a Creditor holds both a General Unsecured Claim and any other type of Claim listed hereinabove, then the Debtor, or the Reorganized Debtor on and after the Effective Date, shall, subject to the approval of Apollo, have the exclusive authority with respect to filing objections, settlement, compromise, withdrawal or litigation to judgment objections to such Claims.

Hearings on objections to Claims shall be fixed at least twenty-eight (28) days after the filing of the objections or at such other time as may be fixed by the Bankruptcy Court or agreed to by the parties (subject to the authority of the Bankruptcy Court). From and after the Effective Date, the Reorganized Debtor and the Litigation Trustee, as applicable, may settle or compromise any Disputed Claim without approval of the Bankruptcy Court, but as provided in

this Plan, subject to the approval of Apollo, as applicable. Except as to Claims Allowed by the Plan or any Final Order entered by the Bankruptcy Court prior to the Effective Date (including the Confirmation Order), the Debtor, up to the Effective Date, and the Reorganized Debtor and Litigation Trustee, as applicable on and after the Effective Date, shall with respect to their respective authority regarding Claims allowance have and retain any and all rights and defenses the Debtor and/or the Estate has or had as of the Petition Date or thereafter with respect to any Claim or Interest.

(b) Disallowance of Claims

Any Claims held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtor by that Entity have been turned over or paid to the Debtor (if prior to the Effective Date) or the Reorganized Debtor or Litigation Trustee, as applicable, on and after the Effective Date.

Except as provided herein or otherwise agreed, any and all Proofs of Claim submitted after the Claims Bar Date shall be deemed Disallowed and expunged as of the Effective Date without any further notice to or action, order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any Distributions on account of such Claims, unless on or before the Confirmation Hearing such late Claim has been deemed timely filed by a Final Order.

(c) Distributions after Allowance

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, Distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. Distributions to which any such Holder is entitled under the Plan as of the Effective Date, less any previous Distribution (if any) that was made on account of the undisputed portion of such Claim shall be made by the Distribution Date, by the Debtor prior to the Effective Date and, on and after the Effective Date, by the Reorganized Debtor or the Litigation Trustee, as applicable.

5.11 *Setoffs*

Except as otherwise expressly provided for in the Plan, the Debtor, Reorganized Debtor, or the Litigation Trustee, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, may offset against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of such Allowed Claim (before any Distribution is made on account of such Allowed Claim), any claims, rights, and Causes of Action of any nature that the Debtor, Reorganized Debtor, or the Litigation Trustee may hold against the Holder of such Allowed

Claim, to the extent such claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or before the Effective Date (whether pursuant to the Plan or otherwise); provided, that neither the failure to exercise such setoff rights nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by the Debtor, Reorganized Debtor, or the Litigation Trustee, of any such claims, rights, and Causes of Action that the Debtor, Reorganized Debtor, or the Litigation Trustee, may possess against such Holder. In no event shall any Holder of Claims be entitled to exercise the right of setoff of any Claim against any claim, right, or Cause of Action of the Debtor, unless such Holder has timely submitted a Proof of Claim in accordance with this Plan or the applicable Bar Date preserving such right of setoff.

5.12 *Litigation Trust*

(a) General and Issuance of the Litigation Trust Interests

On the Effective Date, the Reorganized Debtor and the proposed Litigation Trustee shall execute the Litigation Trust Agreement and shall take all other necessary steps including the transfer of the Initial Litigation Trust Funds to establish the Litigation Trust and the authority to issue the Litigation Trust Interests. The Litigation Trust Agreement may provide powers, duties, and authorities in addition to those explicitly stated herein, but only to the extent that such powers, duties, and authorities do not affect the status of the Litigation Trust as a liquidating trust for United States federal income tax purposes, or otherwise materially affect the recovery of the Litigation Trust Beneficiaries.

On the Distribution Date the Litigation Trustee shall be deemed to have issued the Litigation Trust Interests to the Litigation Trust Beneficiaries. Each Litigation Trust Beneficiary shall receive a Litigation Trust Interest equal to its Pro Rata Share of the Litigation Trust Beneficial Interest Principal Amount. Litigation Trust Interests shall not be represented by certificates, but upon issuance of the Litigation Trust Interests the Litigation Trustee shall issue a schedule of the Litigation Trust Beneficiaries and the Pro Rata Share of Litigation Trust Interests issued to each Litigation Trust Beneficiary.

(b) Purpose of the Litigation Trust

The Litigation Trust shall be established for the sole purpose of liquidating and distributing the Litigation Trust Assets, in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

(c) Fees and Expenses of the Litigation Trust

All fees, expenses, and costs of the Litigation Trust shall be paid by from (i) the Initial Litigation Trust Funds, (ii) Litigation Trust Assets, or (iii) loan funds obtained from the Litigation Trust Loan, and the Reorganized Debtor shall not be responsible for any fees, expenses, and costs of the Litigation Trust.

(d) Assignment to and Funding of the Litigation Trust

As of the Effective Date, the Reorganized Debtor shall assign and transfer the Litigation Trust Assets to the Litigation Trust free and clear of all Claims and Equity Interests, Liens, charges and encumbrances, except to the extent the Litigation Trust Assets (i) shall be Litigation Trust Collateral, securing payment of the Exit Facility, and (ii) shall be Litigation Trust Loan Collateral Securing payment of the Litigation Trust Loan. The transfer(s) of the Litigation Trust Assets shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax. The Litigation Trustee shall also be authorized, on behalf of the Debtor and its Estate, to pursue all objections, counterclaims and defenses against holders of General Unsecured Claims that are not waived or released pursuant to the Plan, subject to the consent rights of Apollo with respect to objections to General Unsecured Claims if such objections in any way involve Avoidance Actions.

Apollo will provide the Litigation Trust with the Litigation Trust Loan, the use of which shall be authorized by the Litigation Trust Loan Documents, (i) to fund the legal expenses of resolution of the Allowed General Unsecured Claims for determining the Litigation Trust Interests and the Litigation Trust Beneficial Interests Principal Amount, and (ii) to pursue the Assigned Causes of Actions.

The Litigation Trust Loan shall without limitation include the terms providing that: (i) the Litigation Trust shall be liable for repayment of the Litigation Trust Loan, regardless of whether there is sufficient Litigation Trust Loan Collateral with which to pay the Loan, provided, however, the Litigation Trust Beneficiaries shall not be personally liable for amounts owed in connection with the Litigation Trust Loan or otherwise be responsible for the obligations of the Litigation Trust thereunder; (ii) no more than seventy percent (70%) of the amount of any payment or of the total payments upon the Litigation Trust Loan can be made from or with proceeds of Litigation Trust Collateral (for the avoidance of doubt, if any single payment is One \$1,000, no more than \$700 of such payment can be made from or with proceeds of Litigation Trust Collateral; and if the total payments upon the Litigation Trust Loan to pay it in full amount are \$520,000, then no more than \$364,000 can be made from or with proceeds of Litigation Trust Collateral); (iii) no more than seventy percent (70%) of the amount of any payment of counsel fees and costs shall be made from the proceeds of Litigation Trust Collateral, unless the billings from counsel establish that more than seventy percent (70%) of such counsel's work was upon attempted recovery of proceeds from Litigation Trust Collateral; and (iv) any funds borrowed for payment for legal fees and costs related to the Frankel Claims shall be repaid solely from proceeds of Litigation Trust Assets that are not proceeds of or from Litigation Trust Collateral.

(e) Governance of the Litigation Trust

The Litigation Trust shall be governed by the Litigation Trust Agreement and administered by the Litigation Trustee. Such Litigation Trust Agreement shall comply with and such Litigation Trustee shall administer the Litigation Trust in accordance with the advance ruling guidelines contained in Revenue Procedure 94-45, 1994-2 C.B. 684.

(f) Appointment of the Litigation Trustee

Prior to the Effective Date, the UCC, with the consent of Apollo, which shall not be unreasonably withheld, shall appoint the Litigation Trustee. In the event the Litigation Trustee dies, is terminated, or resigns for any reason, a successor Litigation Trustee shall be appointed in accordance with the terms of the Litigation Trust Agreement.

(g) Role of the Litigation Trustee

The Litigation Trustee shall hold the Litigation Trust Assets for the benefit of the Litigation Trust Beneficiaries, subject to the obligations of the Litigation Trustee with respect to the Litigation Trust Collateral and Litigation Trust Loan Collateral, which shall be held for the benefit of the Exit Facility Agent or the holders of the Exit Facility, as applicable and the holders Litigation Trust Loan. Subject to the rights of the Holders of the Exit Facility, as applicable and the holders of the Litigation Trust Loan, and the obligations upon the Litigation Trustee regarding the Litigation Trust Collateral and the Litigation Trust Loan Collateral, the Litigation Trustee, without further order of the Bankruptcy Court, shall have the power and authority to (a) prosecute to judgment or, with approval of Apollo to settle, compromise, and resolve the Assigned Causes of Action (except that consent of Apollo shall not be required as regards the Litigation Trustee's authority to settle, compromise or resolve the Frankel Claims, notwithstanding the status of the percentage thereof that is Litigation Trust and Litigation Trust Loan Collateral), (b) calculate and make distributions to the Litigation Trust Beneficiaries of the proceeds of Litigation Trust Assets, (c) liquidate, transfer or otherwise dispose of the Litigation Trust Assets or any part thereof or any interest therein upon such terms as the Litigation Trustee determines to be necessary, appropriate or desirable, (d) terminate the Litigation Trust in accordance with the terms of the Plan and the Litigation Trust Agreement, (e) provide the holders of Litigation Trust Beneficial Interests, annually, with unaudited financial statements, and (f) sell, liquidate, dispose of or abandon Litigation Trust Assets, provided however that (i) any such abandonment shall be to the Reorganized Debtor, but only with approval of Reorganized Debtor, and (ii) the Reorganized Debtor shall, within the ORRI Conveyance and the NPI Conveyance be granted a right of first refusal regarding the sale thereof to a third party, and under the Litigation Trust Agreement the Reorganized Debtor shall be granted a right of first refusal with respect to the sale of any other Litigation Trust Assets to a third party. The Litigation Trustee shall be the sole Person entitled to exercise the rights and duties with respect to the Litigation Trust and the Litigation Trust Assets, subject to the consent rights of Apollo. In all circumstances, the Litigation Trustee shall act in the best interests of all Litigation Trust Beneficiaries and in furtherance of the purposes of the Litigation Trust.

(h) Nontransferability of Litigation Trust Interests

The beneficial interests in the Litigation Trust shall not be certificated and are not transferable.

(i) Retention of Professionals by the Litigation Trustee

The Litigation Trustee without the necessity of Bankruptcy Court approval shall have the right to choose counsel to represent the Litigation Trustee. With respect to the Assigned Causes of Action, appointment of counsel by the Litigation Trustee is subject to the consent of Apollo,

which shall not be unreasonably withheld, except that the Litigation Trustee can retain counsel without the consent of Apollo with respect to the Frankel Claims. All counsel retained by the Litigation Trustee to prosecute any Causes of Action where the Litigation Trustee seeks recovery of greater than \$35,000 will be required to bill at an hourly rate of no greater than \$500 and not on a contingency basis. The Litigation Trustee may retain any professional who represented parties in interest in the Chapter 11 Case, including without limitation, Apollo and the UCC, without such prior representation creating a conflict of interest, but any such retention shall otherwise be subject to the applicable rules of professional conduct governing retention of counsel. Neither the Debtor nor the Reorganized Debtor shall be responsible for the fees, costs and expenses of any counsel or other professional retained by the Litigation Trustee.

(j) Compensation of the Litigation Trustee

The salient terms of the Litigation Trustee's employment, including the Litigation Trustee's duties and compensation, to the extent not set forth in the Plan, shall be set forth in the Litigation Trust Agreement or the Confirmation Order. The Litigation Trustee shall be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy proceedings.

(k) Distributions from the Litigation Trust

All distributions to the Litigation Trust Beneficiaries of Cash and property shall be made in accordance with the terms of the Litigation Trust Agreement by the Litigation Trustee as disbursing agent. The Litigation Trustee shall distribute at periodic intervals as Cash becomes available, in accordance with the Litigation Trust Agreement and this Plan, Cash on hand, except such amounts (i) as are reasonably necessary to meet contingent liabilities, (ii) to pay reasonable expenses (including, but not limited to, any taxes imposed on the Litigation Trust or in respect of the Litigation Trust Assets), (iii) to make required payments under the Litigation Trust Loan, (iv) as may be required to be paid on account of the Exit Facility or, under the Exit Facility Agent Discretion to the Holder of the Series A Units toward the Preferred Amount, and (iv) to satisfy other liabilities incurred by the Litigation Trust in accordance with this Plan or the Litigation Trust Agreement.

(l) Limitation of Litigation Trustee's Liability

The Litigation Trustee shall not have any liability to any Litigation Trust Beneficiary or to any Holder of a Claim for the consequences of his or her acts and omissions in the performance of duties under the Plan and Litigation Trust Agreement, except to the extent such consequences are caused by the Litigation Trustee's intentional and willful wrongdoing or gross negligence. The Litigation Trustee shall have no liability to any Litigation Trust Beneficiary or any Holder of a Claim for the consequences of any act or omission that is approved or ratified by the Bankruptcy Court. The Litigation Trustee shall be deemed to have acted in good faith, and shall have no liability to any Litigation Trust Beneficiary or the Holder of a Claim, for acting in reasonable reliance upon the advice or opinion of counsel or other professional person retained by the Litigation Trustee. Under no circumstances shall the Litigation Trustee be liable to any Litigation Trust Beneficiary or Holder of a Claim or any other Person for an amount in excess of

the amount that such Person was or would have been entitled to receive from the Litigation Trust.

(m) Privileges

The attorney-client privilege, the attorney work product doctrine and any similar privilege against disclosure, and all other similar immunities, including all documents and confidential documents, including but not limited to confidential and/or privileged internal communications of the Board of Managers or officers of the Debtor and any Professionals or committees or committee members of the Debtor that concern or relate in any way to the Chapter 11 Case, any Claims, any actions or matters prior to the filing of or during the Chapter 11 Case, or any matters or Claims or actions dealt with or related to any releases or exculpations set forth in the Plan, or relating to property of the Debtor or the Estate including, but not limited to, all Assigned Causes of Action, the Initial Litigation Trust Funds, shall remain vested on the Effective Date in the Reorganized Debtor, but also, with respect to Litigation Trust Assets and any information or communication relating in any way to Litigation Trust Assets or the General Unsecured Claims shall be vested in the Litigation Trustee as the representative and successor of the Estate and the Debtor with respect to the Litigation Trust Assets. The attorney-client privilege, the attorney work product doctrine and any similar privilege against disclosure, and all other similar immunities, including all documents and confidential documents, of the UCC shall vest on the Effective Date in the Litigation Trust.

(n) Litigation Trust Tax Treatment

The Litigation Trust is intended to be treated for federal income tax purposes as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), for the benefit of the Litigation Trust Beneficiaries. The Litigation Trust shall be a “grantor trust” as defined in section 671 of the Tax Code with each Litigation Trust Beneficiary treated as a “grantor” of the Litigation Trust. For all U.S. federal income tax purposes, all parties shall treat the transfer of assets by the Debtor or the Reorganized Debtor to the Litigation Trust for the benefit of the Litigation Trust Beneficiaries’ Claims, whether Allowed on or after the Effective Date, as (i) a transfer of the assets of the Debtor directly to the Litigation Trust Beneficiaries, followed by (ii) the transfer by such persons to the Litigation Trust of such assets in exchange for beneficial interests in the Litigation Trust. Accordingly, the Litigation Trust Beneficiaries, whether their Claims are Allowed on or after the Effective Date, shall be treated for federal income tax purposes as the grantors and owners of their respective shares of the applicable assets of the Litigation Trust.

(o) Dissolution of the Litigation Trust

The Litigation Trustee and the Litigation Trust shall be discharged or dissolved, as the case may be, at such time as (i) the Litigation Trustee determines, in its sole discretion, that the maintenance of the ORRI and NPI and the pursuit of Assigned Causes of Action are not likely to yield sufficient additional proceeds to justify further maintenance of the Litigation Trust, (ii) all Distributions of Litigation Trust Assets required to be made by the Litigation Trustee under the Plan and Litigation Trust Agreement have been made; provided, however, that in no event shall

the Litigation Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion made, determines that a fixed period extension (not to exceed five (5) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Litigation Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on and liquidation of the Litigation Trust Assets. Upon dissolution of the Litigation Trust, any remaining Litigation Trust Assets shall be distributed to the Litigation Trust Beneficiaries as described herein; provided, however, that if at any time all Allowed Claims of the Litigation Trust Beneficiaries have been paid in full, then any remaining Litigation Trust Assets shall be transferred, or assigned, as the case may be, to the Reorganized Debtor.

5.13 *Releases, Indemnification, Injunction; Exculpation; Discharge*

(a) Discharge of Debtor

The rights afforded under the Plan and the treatment of all Claims and Equity Interests under the Plan shall be in exchange for and in complete satisfaction, discharge, and release of Claims and Equity Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtor and the Reorganized Debtor, or any of their assets or properties. Except as otherwise provided herein, on the Effective Date, all such Claims against and Equity Interests in the Debtor and the Reorganized Debtor shall be satisfied, discharged, and released in full, and all persons shall be precluded from asserting against the Debtor or the Reorganized Debtor, and/or any party released under the Plan, their successors and/or assigns, their assets, or their properties any other or further Claims or Equity Interests based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Confirmation Date.

(b) Injunction

THERE SHALL BE, ON AND AFTER THE EFFECTIVE DATE, AN INJUNCTION TO THE FULLEST EXTENT ALLOWED UNDER SECTIONS 1141 AND 524 OF THE BANKRUPTCY CODE, AND ALL HOLDERS OF CLAIMS SHALL BE ENJOINED FROM PURSUING ANY ACTION ON ACCOUNT OF OR RELATED TO ANY CLAIM THROUGH ANY CONDUCT OR PROCEEDING WHATSOEVER, WITH RESPECT TO DISCHARGED, RELEASED, ENJOINED OR EXCULPATED CLAIMS, AND AS AGAINST ANY PERSON SUBJECT TO OR DERIVING RIGHTS FROM THE DISCHARGE AND/OR ANY RELEASE OR EXCULPATION ARISING UNDER THE PLAN.

(c) Releases by the Debtor

1. Pursuant to section 1123(b) of the Bankruptcy Code and to the fullest extent authorized by applicable law, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after the Effective Date, the Debtor and Reorganized Debtor shall release (i) those officers of the Debtor employed by the Debtor as of the Confirmation Date, (ii) persons who are employed by the Debtor as of the

Confirmation Date, (iii) members of the Debtor's Board of Managers as of the Confirmation Date, (iv) Apollo; (v) Commerce; (vi) Freepoint, (vii) TDF, (viii) with respect to each of the foregoing entities in clauses (iv) through (vii), such Entity's predecessors, successors and assigns, current and former Affiliates, subsidiaries, beneficial owners, current or former officers, directors, managers, principals, shareholders, direct and indirect equity holders, general partners, limited partners, members, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals, in each case in their capacity as such, (ix) each of the Debtor's and the Estate's respective advisors, agents, and representatives (including any and all attorneys, accountants, financial advisors, investment bankers restructuring consultants and professionals and other professionals retained by such persons or entities), and (x) the UCC, its members, and its respective financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other Professionals, for any act or omission occurring up to the Confirmation Date, including acts or omissions in connection with, or arising out of, the Disclosure Statement, the Plan, the solicitation of votes for and the pursuit of Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions constituting gross negligence or willful misconduct as determined by a Final Order of the Bankruptcy Court, which shall possess exclusive jurisdiction over all such determinations, and, in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. For the avoidance of doubt and notwithstanding anything to the contrary herein, nothing in this Plan shall constitute or give rise to a release or waiver of the Frankel Claims.

2. The Debtor, the Estate, the Reorganized Debtor and the Litigation Trustee, as of the Effective Date, to the fullest extent afforded by law and agreement, without any further action on the part of any Entity or Person, but reserving to the fullest extent afforded by law and agreement the Frankel Claims shall on and after the Effective Date have released (i) its current and former direct and indirect equity holders, members, partners, subsidiaries, affiliates, funds, managers, managing members, officers, directors, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives, but excluding Scott A. Frankel, and (ii) Apollo, Commerce, Freepoint, TDF and the UCC and all their respective current and former direct and indirect equity holders, members, partners, subsidiaries, affiliates, funds, managers, managing members, officers, directors, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives, of any claim or Cause of Action, but excluding the Frankel Claims, held by the Debtor as of the Petition date or arising thereafter, and/or assertable by any party as a derivative claim of the Debtor or the Estate. **FOR THE AVOIDANCE OF DOUBT, THIS RELEASE SHALL NOT APPLY TO OR RELEASE ANY CLAIMS, RIGHTS OR CAUSES OF ACTION THAT THE DEBTOR MAY HAVE THAT ARE FRANKEL CLAIMS.**

(d) Releases by Holders of Claims and Interests

Except as otherwise provided in the Plan, and to the fullest extent authorized by

applicable law, on and after the Effective Date, each Consenting Party shall be deemed to have unconditionally released (i) the Debtor, (ii) the Reorganized Debtor (iii) those officers of the Debtor employed as of the Effective Date, (iv) persons who are employed by the Debtor as of the Effective Date, (v) members of the Debtor's Board of Managers as of the Confirmation Date and the Effective Date, (vi) Apollo, (vii) Commerce, (viii) the UCC, (ix) Freepoint, and (x) TDF, and each of their respective advisors, agents, affiliates, and representatives (including any attorneys, accountants, financial advisors, investment bankers and other professionals retained by such persons or entities), from any and all Claims, claims, obligations, rights, suits, damages, Causes of Action, causes of action, remedies and liabilities whatsoever, including any derivative claims, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Consenting Party would have been legally entitled to assert (whether individually, collectively or derivatively) on behalf of the Debtor either before or after commencement of the Bankruptcy Case, based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date in any way relating or pertaining to (a) the Debtor, (b) Claims against or Interests in the Debtor, (c) the circumstances giving rise to the occurrence of the Chapter 11 Case, and (d) the negotiation, formulation and preparation of the Plan, or any related agreements, instruments or other documents.

(e) Indemnification Obligations

Subject to the occurrence of the Effective Date, the obligations of the Debtor to indemnify, defend, reimburse or limit the liability of those Persons who were actual serving members, directors, officers or employees of the Debtor as of and after the Order for Relief against any liabilities, claims or causes of action as provided in any of the articles of incorporation or governance documents of the Debtor, or under applicable state or federal law, shall not be discharged, irrespective of whether such indemnification, defense, reimbursement or limitation is owed in connection with an event occurring before or after the Petition Date. The indemnification obligations of the Debtor not subject to discharge are limited to those authorized or permitted under state or federal law as the same is now or may become applicable at the time any claim for indemnification is made.

(f) Exculpation

The Debtor, the Reorganized Debtor, Apollo, Commerce, TDF, the UCC, and each of their respective representatives (including any attorneys, and restructuring professionals), shall have no liability to any Holder of any Claim, for any act or omission occurring during the course of this Chapter 11 Case occurring up to the Effective Date, including acts or omissions in connection with, or arising out of, the filing of the petition, the preparation of motions, memoranda, or other documents, preparation and/or negotiation of the Disclosure Statement and the Plan, the solicitation of votes for and the pursuit of Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for gross negligence or willful misconduct as determined by a Final Order of the Bankruptcy Court, which shall possess exclusive jurisdiction over all such determinations, and, in all respects, shall be

entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

(g) Recoupment

In no event shall any Holder of Claims or Interests be entitled to recoup any Claim against any claim, right, or Cause of Action of the Debtor, unless such Holder actually has timely submitted a Proof of Claim in accordance with this Plan or the applicable Bar Date preserving such right of recoupment.

(h) Reimbursement or Contribution

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless before the Confirmation Date: (1) such Claim has been adjudicated as non-contingent or (2) the relevant Holder of a Claim has submitted a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered before the Confirmation Date determining such Claim as no longer contingent.

5.14 *Modification of the Plan; Revocation*

The Plan Proponents reserve the right to alter, amend, or modify this Plan or any exhibits hereto under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date, but only by unanimous agreement among them. After the Confirmation Date and prior to substantial consummation of the Plan, as defined in section 1101(2) of the Bankruptcy Code, the Plan Proponents, but only by unanimous agreement among them, may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, and related documents and agreements, 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 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.

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof and before the Confirmation Date are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

The Plan Proponents reserve the right to revoke or withdraw the Plan before the Confirmation Date or the Effective Date and to file subsequent plans under chapter 11 of the Bankruptcy Code, but only by unanimous agreement among them. If the Plan Proponents revoke or withdraw the Plan, 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 Interest or Class of Claims or Interests), assumption and assignment or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (iii) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtor, the UCC or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor or the UCC or any other Entity; *provided*, that such revocation or withdrawal shall not in any way limit, prejudice or affect the ability of the Debtor to consummate a sale transaction pursuant to section 363 of the Bankruptcy Code after revocation or withdrawal of the Plan, or the rights of the UCC or any Entity to object to any such sale transaction.

5.15 *Conditions Precedent to the Occurrence of the Effective Date; Waiver*

(a) Conditions Precedent to Confirmation

The following shall constitute conditions precedent to Confirmation of the Plan:

1. The Bankruptcy Court shall have entered an Order in form and substance reasonably acceptable to the Debtor, Commerce, Apollo and the UCC, approving this Disclosure Statement related to the Plan; and

2. The Confirmation Order shall be reasonably acceptable to the Debtor, Commerce, Apollo and the UCC, and otherwise be consistent with the terms and conditions described in the Plan and shall have been Entered by the Bankruptcy Court.

(b) Conditions Precedent to the Effective Date

The occurrence of the Effective Date is subject to satisfaction of the following conditions precedent (or conditions contemporaneous or subsequent with respect to actions which are to be taken contemporaneously with or immediately after the occurrence of the Effective Date), any of which may be waived in writing by the Debtor with, if specified herein, the consent of Commerce, the UCC and/or Apollo, as applicable, which consent shall not be unreasonably withheld:

1. The Bankruptcy Court shall have entered the Confirmation Order and it shall have become a Final Order; provided, that in accordance with Bankruptcy Rules 3020(e), 6004(h), and 6006(d) (and notwithstanding any other provision of the Bankruptcy Code or the Bankruptcy Rules), the Confirmation Order shall not be stayed and shall be effective immediately upon its entry;

2. All documents and agreements necessary to implement the Plan, including all documents related to the Exit Facility, Series A Units, Series B Units, Series C Units (if any) and the Litigation Trust, shall have (a) all conditions precedent to the effectiveness of such documents and agreements satisfied or waived pursuant to the terms of such documents or agreements, (b) been tendered for delivery, and (c) been effected or executed;

3. All governmental and material third party approvals and consents, including Bankruptcy Court approval, necessary in connection with the transactions contemplated by the Plan shall have been obtained, not be subject to unfulfilled conditions and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent, or otherwise impose materially adverse conditions on such transactions;

4. The timing of the Effective Date shall have been agreed to by the Debtor, Apollo, Commerce and the UCC;

5. The D&O Insurance Tail Policy shall have been purchased;

6. All reasonable Professional Fees and expenses of legal counsel and financial advisors to Apollo and Commerce incurred in connection with this restructuring, including without limitation, those fees and expenses incurred prior to and during the Chapter 11 Case, shall have been paid by the Debtor;

7. The total amount of Allowed Administrative Claims (other than any such Claim held by Apollo or fees due to the Office of the United States Trustee) that remain to be paid is less than \$3,000,000;

8. The total amount of Allowed Priority Non-Tax Claims that remain to be paid is less than \$4,750,000;

9. The Bankruptcy Court shall have made all findings and the Continuation Order shall have all of the Effects listed in Article XII of this Plan;

10. The pleadings to dismiss with prejudice the UCC Adversary Proceeding, including pleadings to dismiss the proceedings regarding withdrawal of the reference of the UCC Adversary Proceeding ("UCC Adversary Dismissal Pleadings") shall have been agreed to in form and substance by the Debtor, the UCC, Apollo, Commerce and Whistler, and shall have been executed by all counsel for these parties, with such pleadings to be held by counsel for Apollo pending the occurrence of the Effective Date; and

11. The Interior Reassessment, any supplemental bonding or other financial accommodations or obligations as outlined in the Interior Notice as well as any phase in plan for implementation of any reassessment shall have been resolved to the satisfaction of Apollo.

(c) Waiver of Conditions

The conditions to Confirmation and Consummation set forth in this Article XI of the Plan may be waived only by prior written consent of the Debtor, Apollo and the UCC, which consent shall not be unreasonably withheld, without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan.

(d) Filing Notice of the Effective Date

Within two (2) Business Days after the occurrence of the Effective Date, counsel for the Debtor, Apollo and the UCC shall file a joint notice of occurrence of the Effective Date in the record of the Bankruptcy Court reflecting (i) that the foregoing conditions to the occurrence of the Effective Date have been satisfied or waived by the Debtor, Apollo and the UCC (and any other person who is required by the Plan to approve such waiver), (ii) specifying the date of the Effective Date, and (iii) acknowledging that the Effective Date has occurred on and as of said date.

(e) Filing the UCC Adversary Dismissal Pleadings

In addition to the other effects of the occurrence of the Effective Date, within two (2) Business Days after the Notice of the Effective Date is Filed, Counsel for Apollo shall file the UCC Adversary Dismissal Pleadings.

5.16 *Findings by the Bankruptcy Court and Effects of Confirmation*

In addition to the findings set forth in section 1129(a) of the Bankruptcy Code, and such others as may be separately issued by the Bankruptcy Court, Confirmation of the Plan shall be based upon such findings by the Bankruptcy Court as are reasonably proper in the premises and the Confirmation Order shall contain such orders upon such findings as appropriate. Without limitation, such findings and the effects of the Confirmation Order shall include, in addition to the effects otherwise described in the Plan:

1. That the aggregate value of the Assets of the Estate and of the DIP Collateral together with the Exit Facility Collateral, is no greater than the aggregate amount of the Senior Credit Facility Claims plus the DIP Facility Claims, such that under section 506(a) of the Bankruptcy Code and Bankruptcy Rule 3012, (a) any Claims submitted or Filed as Secured Claims with the Collateral for such Claims alleged to be DIP Collateral and/or Exit Facility Collateral shall, if such Claims are Allowed Claims, be Allowed General Unsecured Claims, and (b) No Holder of such a Claim shall be entitled to make an election under section 1111(b) of the Bankruptcy Code to have such Claim treated as a Secured in rem Claim;

2. That Confirmation shall be deemed approval of the Exit Facility (including the transactions contemplated thereby, such as any supplementation or syndication of the Exit Facility, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtor in connection therewith, including the payment of all fees, indemnities, and expenses provided for therein), authorization for the Reorganized Debtor to enter into and execute the Exit Facility and such other documents as Apollo may reasonably require to effectuate the treatment afforded to Apollo pursuant to the Exit Facility, subject to such modifications as the Reorganized Debtor (with the consent of Apollo) may deem to be reasonably necessary to consummate such Exit Facility, and the granting and ratification of the Security Interests and priority thereof Securing the payment of the Exit Facility;

3. That the New Equity, the Exit Facility, any other notes, if any, to be issued under the Plan, the Litigation Trust Agreement and the Litigation Trust Beneficial Interests are exempt

from registration under the Securities Act of 1933 and the Trust Indenture Act of 1939 pursuant to section 1145 of the Bankruptcy Code and that the Exit Facility, any other notes, if any, to be issued under the Plan, the Litigation Trust Agreement and the Litigation Trust Beneficial Interests are not otherwise subject to the Trust Indenture Act of 1939;

4. That the Debtor and Reorganized Debtor are authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, transfers and other agreements or documents created in connection with the Plan, subject to all approvals as may be required by applicable non-bankruptcy law to effectuate the Effective Date;

5. That the Debtor and Apollo and on and after the effective Date the Reorganized Debtor with the approval of the UCC are authorized to create the Litigation Trust;

6. That the classification, distributions, releases, settlements, compromises and other benefits and transactions provided for by and under the Plan and under the authority of section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, are conclusively determined and found to be made in good faith and for equivalent consideration;

7. All Employment/Service Agreements have either terminated by their terms or have been terminated by action of the Board of Managers prior to Confirmation; and

8. That cause exists to abrogate the stay of the effect of the Confirmation Order in accordance with Bankruptcy Rule 3020(e).

ARTICLE VI CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND SECURITIES LAW CONSIDERATIONS

6.1 Generally

THE FOLLOWING DISCUSSION IS A SUMMARY OF CERTAIN OF THE SIGNIFICANT FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO THE DEBTOR, AND TO HOLDERS OF CLAIMS AND EQUITY INTERESTS AND IS BASED ON THE INTERNAL REVENUE CODE, TREASURY REGULATIONS PROMULGATED AND PROPOSED THEREUNDER, JUDICIAL DECISIONS AND PUBLISHED ADMINISTRATIVE RULES AND PRONOUNCEMENTS OF THE IRS AS IN EFFECT ON THE DATE HEREOF. CHANGES IN SUCH RULES OR NEW INTERPRETATIONS THEREOF COULD SIGNIFICANTLY AFFECT THE TAX CONSEQUENCES DESCRIBED BELOW. NO RULINGS HAVE BEEN REQUESTED FROM THE IRS. MOREOVER, NO LEGAL OPINIONS HAVE BEEN REQUESTED FROM COUNSEL WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN.

THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES OF THE PLAN TO THE HOLDERS OF CLAIMS AND EQUITY INTERESTS MAY VARY BASED

UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. IN ADDITION, THIS DISCUSSION DOES NOT COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO THE DEBTOR OR THE HOLDERS OF ALLOWED CLAIMS OR EQUITY INTERESTS (SUCH AS HOLDERS WHO DO NOT ACQUIRE THEIR CLAIM ON ORIGINAL ISSUE), NOR DOES THE DISCUSSION DEAL WITH TAX ISSUES PECULIAR TO CERTAIN TYPES OF TAXPAYERS (SUCH AS DEALERS IN SECURITIES, S CORPORATIONS, LIFE INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, TAX-EXEMPT ORGANIZATIONS AND FOREIGN TAXPAYERS). NO ASPECT OF FOREIGN, STATE, LOCAL OR ESTATE AND GIFT TAXATION IS ADDRESSED.

THE FOLLOWING SUMMARY IS, THEREFORE, NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM OR EQUITY INTEREST. HOLDERS OF CLAIMS OR EQUITY INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES PECULIAR TO THEM UNDER THE PLAN. THE DEBTOR ASSUMES NO RESPONSIBILITY FOR THE TAX EFFECT THAT CONFIRMATION AND RECEIPT OF ANY DISTRIBUTION UNDER THE PLAN MAY HAVE ON ANY GIVEN CREDITOR OR OTHER PARTY IN INTEREST.

6.2 *IRS Circular 230 Disclosure*

THIS DISCLOSURE STATEMENT IS WRITTEN TO SUPPORT THE PROMOTION OR THE MARKETING OF TRANSACTIONS DISCUSSED HEREIN. TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, THE DEBTOR IS INFORMING YOU THAT THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING TAX-RELATED PENALTIES THAT MAY BE IMPOSED ON SUCH TAXPAYER UNDER THE TAX CODE. TAXPAYERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

6.3 *Tax Consequences to Holders of Claims*

(a) *Realization and Recognition of Gain or Loss in General*

The federal income tax consequences of the implementation of the Plan to a Holder of a Claim will depend, among other things, upon the origin of the Holder's Claim, when the Holder's Claim becomes an Allowed Claim, when the Holder receives payment in respect of such Claim, whether the Holder reports income using the accrual or cash method of accounting, whether the Holder has taken a bad debt deduction or worthless security deduction with respect to such Claim, and whether the Holder's Claim constitutes a "security" for federal income tax purposes.

Generally, a Holder of an Allowed Claim will realize gain or loss on the exchange under

the Plan of its Allowed Claim for stock and other property (such as Cash and new debt instruments), in an amount equal to the difference between (i) the sum of the amount of any Cash and the issue price of any debt instrument, (other than any consideration attributable to a Claim for accrued but unpaid interest), and (ii) the adjusted basis of the Allowed Claim exchanged therefor (other than basis attributable to accrued but unpaid interest previously included in the Holder's taxable income). The treatment of accrued but unpaid interest and amounts allocable thereto varies depending on the nature of the Holder's Claim and is discussed below.

Whether or not such realized gain or loss will be recognized (*i.e.*, taken into account) for federal income tax purposes will depend in part upon whether such exchange qualifies as a recapitalization or other "reorganization" as defined in the Tax Code, which may in turn depend upon whether the Claim exchanged is classified as a "security" for federal income tax purposes. The term "security" is not defined in the Tax Code or in the Treasury Regulations. One of the most significant factors considered in determining whether a particular debt instrument is a security is the original term thereof. In general, the longer the term of an instrument, the greater the likelihood that it will be considered a security. As a general rule, a debt instrument having an original term of 10 years or more will be classified as a security, and a debt instrument having an original term of fewer than five years will not. Debt instruments having a term of at least five years but less than 10 years are likely to be treated as securities, but may not be, depending upon their resemblance to ordinary promissory notes, whether they are publicly traded, whether the instruments are secured, the financial condition of the Debtor at the time the debt instruments are issued, and other factors. Each Holder of an Allowed Claim should consult his or her own tax advisor to determine whether his or her Allowed Claim constitutes a security for federal income tax purposes.

(b) Accrued Interest

Each Holder of an Allowed Claim is urged to consult its tax advisor regarding the allocation of consideration and deductibility of unpaid interest for tax purposes. The Plan does not provide that interest on any Claim will accrue from the Petition Date until the Effective Date.

(c) Withholding

All distributions to Holders of Claims under the Plan are subject to any applicable withholding. Under federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to "backup withholding" at a 28% rate. Backup withholding generally applies if the Holder (a) fails to furnish its social security number or other taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (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 TIN 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.

6.4 *Tax Consequences to Holders of Equity Interests*

The treatment afforded the Equity Interest Holders in Class 7 of the Plan does not account for any tax consequences to these Holders that may result from the cancellation of the Equity Interests, the issuance of the Class B Units or the possible effects, if any, of debt forgiveness as will or might occur as a result of Confirmation and the Effective Date, nor does this Disclosure Statement offer any advice or recommendations on the tax consequences that may or may not result from such Confirmation and the occurrence of the Effective Date. Equity Interest Holders in Class 7 may incur tax consequences resulting from their treatment under the Plan and are strongly urged to consult their tax advisors to determine any tax consequences that may result from this Plan.

ARTICLE VII VOTING; CONFIRMATION; ALTERNATIVE TO PLAN

7.1 Confirmation Standards

Pursuant to section 1128 of the Bankruptcy Code and Bankruptcy Rule 3017(c), the Bankruptcy Court has scheduled a Confirmation Hearing for [November *], 2016, at [*] _m. Central Time. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequently adjourned Confirmation Hearing. Objections to Confirmation of the Plan must be made in writing and must specify in detail the name and address of the objector, all grounds for the objection, and the amount and Class of the Claim. Any such objection must be filed with the Bankruptcy Court on or before [November *], 2016, at [*] Central Time. Objections to Confirmation of the Plan are governed by Bankruptcy Rule 9014.

To confirm the Plan, the Bankruptcy Code requires that the Bankruptcy Court make a series of findings concerning the Plan and the Debtor, including that:

- the Plan has classified Claims and Interests in a permissible manner;
- the Plan complies with the applicable provisions of the Bankruptcy Code;
- the Debtor has complied with the applicable provisions of the Bankruptcy Code;
- the Debtor, as proponent of the Plan, has proposed the Plan in good faith and not by any means forbidden by law;
- the disclosure required by section 1125 of the Bankruptcy Code has been made;
- the Plan has been accepted by the requisite votes of Creditors and Equity Interest Holders;
- the Plan is feasible and Confirmation will not likely be followed by the liquidation or the need for further financial reorganization of the Debtor or the Reorganized Debtor;

- the Plan is in the “best interests” of all Holders of Claims or Interests in an impaired Class by providing to Creditors or Interest Holders on account of such Claims or Interests property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain in a chapter 7 liquidation, unless each Holder of a Claim or Interest in such Class has accepted the Plan;
- all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of such fees on the Effective Date; and
- the disclosures required under section 1129(a)(5) of the Bankruptcy Code concerning the identity and affiliations of persons who will serve as officers, directors and voting trustees of the Reorganized Debtor have been made.

(a) “Best Interests” Test.

The Bankruptcy Code requires that the Bankruptcy Court find that the Plan is in the best interest of all holders of Claims and Interests that are Impaired by the Plan and that have not accepted the Plan as a requirement to confirm the Plan. The “best interests” test, as set forth in section 1129(a)(11) of the Bankruptcy Code, requires the Bankruptcy Court to find either that all members of an Impaired Class of Claims or Interests have accepted the Plan or that the Plan will provide a member who has not accepted the Plan with a recovery of property of a value, as of the effective date of the Plan, that is not less than the amount that such holder would receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code on such date.

In chapter 7 liquidation, no junior class of Claims or Interests may be paid unless all classes of Claims or Interests senior to such junior class are paid in full. Section 510(a) of the Bankruptcy Code provides that subordination agreements are enforceable in a bankruptcy case to the same extent that such subordination is enforceable under applicable nonbankruptcy law. Therefore, no class of Claims or Interests that is contractually subordinated to another class would receive any payment on account of its Claims or Interests, unless and until such senior classes were paid in full. Once the Bankruptcy Court ascertains the recoveries in liquidation of the Debtor’s secured and priority creditors, it would then determine the probable distribution to unsecured creditors from the remaining available proceeds of the liquidation. If this probable distribution has a value greater than the value of distributions to be received by the unsecured creditors under the Plan, then the Plan is not in the best interests of creditors and cannot be confirmed by the Bankruptcy Court.

The Debtor believes that the Plan affords Holders of Claims the potential for the greatest realization on the Debtor’s assets and, therefore, is in the best interests of such Holders. For further discussion, see the Liquidation Value discussion below in Article 7.3.

(b) Feasibility

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 a debtor. The Debtor and the other Plan Proponents have evaluated alternatives to the Plan, including alternative structures and terms of the Plan. While the Debtor and the other Plan Proponents have concluded that the Plan is the best alternative and will maximize recoveries by holders of Claims, if the Plan is not confirmed, the Debtor or (subject to the Debtor's exclusive periods under the Bankruptcy Code to File and solicit acceptances of a plan) any other party in interest in the Chapter 11 Case could attempt to formulate and propose a different plan, which the Debtor sees as a costly and non-fruitful prospect. The Plan is jointly proposed by the representatives of the major constituencies in the Chapter 11 Case—the UCC, the Debtor, Commerce and Apollo.

Further, if no plan under chapter 11 of the Bankruptcy Code can be confirmed, the Chapter 11 Case may be converted to a chapter 7 case. In a liquidation case under chapter 7 of the Bankruptcy Code, a trustee would be appointed to liquidate the remaining assets of the Debtor and distribute proceeds to creditors. The proceeds of the liquidation would be distributed to the respective creditors of the Debtor in accordance with the priorities established by the Bankruptcy Code. For further discussion of the potential impact on the Debtor of the conversion of the Chapter 11 Case to a chapter 7 liquidation, see Article 7.3. The Debtor believes that Confirmation and consummation of the Plan and the occurrence of the Effective Date is preferable to the available alternatives.

Attached to this Disclosure Statement as **Exhibit D** are the Debtor's projections for the next two year's operations, without completion of the Erato Well. This is a base case, but it shows that the Reorganized Debtor's operations will provide sufficient cash flow to sustain both operations and the payment of burdens upon the Leasehold Interests, including the ORRI. The Exit Facility cushion of the Working Capital Amount availability, makes these projections even more sustainable. Clearly, for maximum recovery under the ORRI and the Preferred Amount, the Reorganized Debtor would need to drill and complete the Erato Well, and bring it on production. To be safe, the projections have not included the Erato Well revenues or additional reserves, and do not include recoveries from the Assigned Causes of Action. Any such recoveries would add to the recovery for Creditors under the Plan.

(c) Cram Down

If all of the applicable requirements for Confirmation of the Plan are met as set forth in section 1129(a) of the Bankruptcy Code except for subsection (8) thereof, the Debtor may request the Bankruptcy Court to confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding the requirements of section 1129(a)(8) of the Bankruptcy Code, on the basis that the Plan is fair and equitable and does not discriminate unfairly with respect to any Impaired Class that does not vote to accept this Plan as described in the Disclosure Statement.

To obtain confirmation, it must be demonstrated to a bankruptcy court that a plan “does not discriminate unfairly” and is “fair and equitable” with respect to each dissenting impaired class. A plan does not discriminate unfairly if the legal rights of a dissenting impaired class are treated in a manner consistent with the treatment of other classes whose legal rights are substantially similar to those of the dissenting impaired class and if no class receives more than it is entitled to for its claims. The Debtors believe the Plan satisfies this requirement.

The Bankruptcy Code establishes different “fair and equitable” tests for secured claims, unsecured claims, and holders of equity interests.

- i. **Secured Claims.** with respect to treatment of a secured claim under a plan, “fair and equitable” means either (i) the impaired secured creditor retains its liens to the extent of its allowed claim and receives deferred cash payments at least equal to the allowed amount of its claims with a present value as of the effective date of a plan at least equal to the value of such creditor’s interest in the property securing its liens, (ii) property subject to the lien of the impaired secured creditor is sold free and clear of that lien, with that lien attaching to the proceeds of sale, and such lien proceeds are treated in accordance with clauses (i) and (iii) hereof, or (iii) the impaired secured creditor realizes the “indubitable equivalent” of its claim under a plan.
- ii. **Unsecured Claims.** with respect to treatment of an unsecured claim under a plan, “fair and equitable” means either, (i) each impaired unsecured creditor receives or retains property of a value equal to the amount of its allowed claim, or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under a plan.
- iii. **Equity Interests.** With respect to the treatment of equity interests under a plan, “fair and equitable” means either (i) each equity interest holder will receive or retain under a plan property of a value equal to the greatest of the allowed amount of any fixed liquidation preference or redemption price, if any, of such equity interest or the value of the equity interest, or (ii) the holders of equity interests that are junior to the dissenting class of equity interests will not receive or retain any property under a plan on account of such junior equity interest.

The Debtor believes that the Plan can be confirmed on a non-consensual basis if the Holders of any Class of Claims entitled to vote on the Plan vote to reject the Plan (provided at least one Impaired Class of Claims entitled to vote votes to accept the Plan). If appropriate, the Debtor will demonstrate at the Confirmation Hearing that the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code as to any non-accepting Class.

7.2 *Vote Required for Acceptance by a Class*

The Bankruptcy Code defines acceptance of a plan by a class of Claims as acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the allowed Claims of that class held by creditors, other than any entity designated under Bankruptcy Code § 1129(e), who cast ballots for acceptance or rejection of the Plan.

- (a) Acceptance by Impaired Classes. Each Impaired Class of Claims that will

(or may) receive or retain property or any interest in property under the Plan shall be entitled to vote to accept or reject the Plan. An Impaired Class of Claims shall have accepted the Plan if (i) the holders (other than any holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (ii) the holders (other than any holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half (1/2) in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

(b) Voting Presumptions. Claims in Unimpaired Classes are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan. This applies to Class 6, the Argo Secured Claim, who is deemed Unimpaired and therefore conclusively presumed to accept the Plan. Claims and Equity Interests in Classes that do not entitle the holders thereof to receive or retain any property under the Plan are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan. This is applicable to the Holders of Equity Interests in Class 7 are conclusively presumed to reject the Plan.

(c) Voting Rights. Pursuant to the provisions of the Bankruptcy Code, only Holders of Claims and Equity Interests in Classes that are (a) treated as “impaired” by a plan of reorganization and (b) entitled to receive a distribution under such plan are entitled to vote on the Plan. Under the Plan, only Holders of Claims in Classes 1, 2, 3, 4 and 5 are entitled to vote on the Plan. The Holder of the Class 6 Argo Secured Claim is Unimpaired and deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code and therefore is not entitled to vote to accept or reject the Plan. Holders of Allowed Equity Interests in Class 7 are Impaired but are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan.

Notwithstanding the foregoing, only holders of Allowed Claims in the voting Classes are entitled to vote on the Plan. A Claim which is unliquidated, contingent, or disputed is not an Allowed Claim and is, therefore, not entitled to vote, unless and until the amount is estimated or determined, or the dispute is determined, resolved, or adjudicated in the Bankruptcy Court or another court of competent jurisdiction, or pursuant to agreement as may be permitted. However, the Bankruptcy Court may deem a contingent, unliquidated, or disputed Claim to be allowed on a provisional basis, for purposes only of voting on the Plan. If your Claim is contingent, unliquidated, or disputed, you will receive instructions for seeking temporary allowance of your Claim for voting purposes and it will be your responsibility to obtain an order provisionally allowing your Claim.

7.3 Alternatives to Confirmation Is Chapter 7 Liquidation

If the Debtor fails to obtain enough acceptances from Classes 1, 2, 3, 4 and/or 5 to confirm the Plan, or the Plan is not subsequently confirmed and consummated, the alternative is liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

Proceeding under chapter 7 would impose significant additional monetary and time costs

on the Debtor's Estate. Under chapter 7, a trustee would be elected or appointed to administer the Estate, to resolve pending controversies, including Disputed Claims against the Debtor and Claims of the Estate against other parties, and to make distributions to holders of Claims. A chapter 7 trustee would be entitled to compensation in accordance with the scale set forth in section 326 of the Bankruptcy Code, and the trustee would also incur significant administrative expenses. The chapter 7 administrative expenses also take priority over any chapter 11 administrative expenses.

There is a strong probability that a chapter 7 trustee in these cases would not possess any particular knowledge about the Debtor. Additionally, a trustee would probably seek the assistance of professionals who may not have any significant background or familiarity with this Chapter 11 Case. The trustee and any professionals retained by the trustee likely would expend significant time familiarizing themselves with this Chapter 11 Case. This would result in duplication of effort, increased expenses, and delay in payments to creditors, time and money are inevitable. In addition to these time and monetary costs, there are other problems in a chapter 7 liquidation that would result in a substantially smaller recovery for holders of Claims than under the Plan.

Further, Distributions under the Plan probably would be made earlier than would distributions in a chapter 7 case. Distributions of the proceeds in a chapter 7 liquidation might not occur until one or more years after the completion of the liquidation in order to afford the trustee the opportunity to resolve claims and prepare for distributions.

The Bankruptcy Court must also find that the Holders of Claims and Equity Interests who do not accept the Plan and/or who object to the Plan will receive at least as much under the Plan as such Holders of Claims and Equity Interests would receive in a chapter 7 liquidation. This requirement, called the best interests of creditors test, applies in connection with the Plan to those Creditors and Equity Interest Holders in Classes 1, 2, 3, 4, 5 and 7, which are the only Classes Impaired by the Plan. The best interests of creditors test discussion in disclosure statements is accompanied by a "liquidation analysis" or discussion of what Creditors and Equity Interest Holders would receive upon liquidation of the bankruptcy estate through chapter 7 of the Bankruptcy Code. In effect, the Bankruptcy Code recognizes that the chapter 7 liquidation process is the bankruptcy process that most likely provides the greatest chance of the least amount of recovery; hence the right of the dissenting creditor, regardless of the Vote of the Class, retains this basic right.

The Debtor offers this liquidation analysis for review by those Holders whose Claims and/or Equity Interests are Impaired by the Plan. The Debtor believes that liquidation under chapter 7 would result in substantial diminution of the value of the Estate because, among other reasons: (i) of the loss of current management and a chapter 7 trustee likely being unable to run Debtor's business; (ii) of the additional administrative expenses involved in the appointment of a trustee and additional attorneys, accountants, and other professionals to assist such trustee (section 726(b) of the Bankruptcy Code elevates the priority of the trustee and his professionals above the administrative expenses of the chapter 11 case); (iii) of the fact that upon the appointment of a trustee the Estate's right to use cash collateral and obtain post-petition financing would terminate and Apollo would have no obligation to continue to allow the trustee

or Estate (a) to use Apollo's cash collateral or (b) have access to post-petition financing, and conceivably Apollo could commence immediately the charging of default interest under the Senior Credit Facility; (iv) the Estate would likely be unable to perform necessary contracts given the absence of line of credit financing and could likely be unable to obtain value and suffer default of those contracts; (v) the assets of the Debtor could, by losing ongoing operational value, be valued only as standalone assets to be sold at auction, which would drastically diminish their value given the current state of the oil and gas industry and the probability of reduced maintenance subsequent to the appointment of a chapter 7 trustee and pending auction; and (vi) of the overall diminution in value of Debtor's assets resulting from the disruption and delay caused by the conversion to chapter 7, institution of a trustee and resignation of current management. A breakdown of the estimated liquidation value of the Debtor is attached as **Exhibit E**.

The Debtor estimates the liquidation value of its assets, namely proved oil and gas reserves, to be approximately \$43,575,000 broken down as follows: (i) proved developed producing reserves (PDP) at one hundred percent (100%) of the present value of estimated future oil and gas revenues, net of estimated direct expenses, discounted at an annual discount rate of 10% ("PV10") of approximately \$36,627,000; (ii) proved developed nonproducing reserves (PDNP) at ten percent (10%) of PV10 of approximately \$2,421,000; and (iii) proved undeveloped reserves (PUD) at five percent (5%) of PV10 of approximately \$4,527,000. To provide a liberal liquidation value (which likely would not be achievable in today's market, especially with the Interior Reassessment being unresolved), **Exhibit E** provides an add-on to bring the liquidation value of the Leasehold Interests to approximately \$50 Million. In addition to the liquidation value of Debtor's proved reserves, the Debtor's preliminary Preference Analysis suggests that the Trustee could possibly recover approximately \$6,487,000 of payments made to vendors, after taking into consideration a liquidation discount plus fees, costs and available defenses. The Debtor has given no value to the UCC Adversary Proceeding, or to the furniture, fixtures, IT equipment or seismic licenses.

The Frankel Claims are of unknown value, but in a chapter 7 liquidation, it is probable that counsel would be retained on a contingency basis of 40% of recovery, plus costs. Accordingly, the Debtor's total estimated liquidation value, not including trustee compensation and other administrative costs (but accounting for contingency fee representation with respect to the Avoidance Actions) is approximately \$50 Million to \$55.362 Million. At best, value left for Unsecured Creditors, including chapter 7 Administrative Claims, would be only the portion of the Avoidance Actions that is not DIP Facility Collateral, plus any net recovery from the Frankel Claims. There would be no ORRI, no NPI, no Convenience Class treatment, no Litigation Trust Loan, no Cap Ex Amount (to provide funding for further drilling and completion operations). As shown on Exhibit D, the Debtor estimates the non-Collateral portion of the Avoidance Actions to be \$1.2 Million. After deduction of projected chapter 7 Administrative Claims of \$1.5 million, there is a residual amount of such Claims left of (\$0.3) Million. Therefore, the chapter 7 estate would be administratively insolvent.

Also, unlike the case with the Plan if Confirmed, a chapter 7 liquidation case would see (a) Apollo Holding a deficiency General Unsecured Claim in the approximate amount of \$108 Million, and (b) Commerce Holding a General Unsecured Claim in the approximate amount of

\$34 Million. Therefore, this additional \$137 Million would be added to the approximate \$25–27 Million of General Unsecured Claims, reducing any share in the non-Collateral Assets by several fold (though in reality the only Asset available would be the Frankel Claims, to the extent such Causes of Action would pay the remaining chapter 7 Administrative Claims and the chapter 11 Administrative Claims and Gap Claims). Also, the addition of chapter 7 administrative expenses and the priority chapter 11 Claims, and the probability of no further operations given the absence of interest in pushing for review of the Interior Reassessment, leads to the unimpeachable conclusion that recovery to Holders of General Unsecured Claims in a chapter 7 liquidation would be non-existent, and even the Administrative and Priority Claims would receive no distributions. Such an outcome is certainly less than as may be obtained by these Creditors under the Plan. The Holders of Equity Interests would receive nothing on account of their interests, so the Plan makes the Equity Interest Holders no worse off.

THE PLAN PROPONENTS BELIEVE THAT THE PLAN AFFORDS SUBSTANTIALLY GREATER RECOVERY TO HOLDERS OF CLAIMS AND NO WORSE TREATMENT OF EQUITY INTERESTS THAN SUCH HOLDERS WOULD RECEIVE IF THE DEBTOR WERE LIQUIDATED UNDER CHAPTER 7 OF THE BANKRUPTCY CODE.

ARTICLE VIII CERTAIN FACTORS TO BE CONSIDERED

Prior to voting to accept or reject the plan, all holders of Claims should read and carefully consider the risk factors set forth below, as well as all other information set forth or otherwise referenced in this disclosure statement. These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation. Additional risks and uncertainties not presently known to the Debtor or that it currently deems immaterial may also harm its Estate.

8.1 Objections to Plan and Confirmation

Section 1129 of the Bankruptcy Code provides certain requirements for a chapter 11 plan to be confirmed. Parties-in-interest may object to confirmation of the Plan based on an alleged failure to fulfill these requirements or other reasons.

8.2 Objections to Classification of Claims and Equity Interests

Section 1122 of the Bankruptcy Code provides that a plan of reorganization may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtor believes that the classification of Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because each class of Claims and Equity Interests encompass Claims or Interests that are substantially similar to the other Claims or Equity Interests in each such class.

8.3 Failure to Obtain Confirmation of the Plan

The Debtor cannot ensure it will receive enough acceptances to confirm the Plan. But,

even if the Debtor does receive enough acceptances, there can be no assurance that the Bankruptcy Court will confirm the Plan. Even if enough acceptances are received and, with respect to those Classes deemed to have rejected the Plan, the requirements for “cramdown” are met, the Bankruptcy Court, which as a court of equity may exercise substantial discretion, may choose not to confirm the Plan or may require additional solicitations or consents prior to confirming the Plan. Section 1129 of the Bankruptcy Code requires, among other things, that the value of distributions to dissenting holders of Claims and Interests may not be less than the value such holders would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. Although the Debtor believes that the Plan will meet such tests, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

The Debtor’s ability to propose and confirm an alternative plan is uncertain. Confirmation of any alternative plan under chapter 11 of the Bankruptcy Code would likely take significantly more time and result in delays in the ultimate distributions to the holders of Claims. If confirmation of an alternative plan is not possible, the Debtor would likely be liquidated under chapter 7. Based upon the Debtor’s analysis, liquidation under chapter 7 would result in distributions of reduced value, if any, to holders of Claims.

8.4 *Failure to Consummate or Effectuate a Plan*

Consummation of the Plan is conditioned upon, among other things, entry of the Confirmation Order approving any transactions contemplated thereunder. As of the date of this Disclosure Statement, there can be no assurance that any or all of the foregoing conditions will be met or that the other conditions to consummation, if any, will be satisfied. Accordingly, even if the Plan is confirmed by the Bankruptcy Court, there can be no assurance that the Plan will be consummated and effectuated and the liquidation completed.

8.5 *Risk of Non-Occurrence of the Effective Date of the Plan*

Although the Debtor believes that the Effective Date may occur within a reasonable time following the Confirmation Date, there can be no assurance as to such timing.

8.6 *Claims Estimation*

There can be no assurance that the estimated amount of Claims is correct, and the actual Allowed amounts of Claims may differ from estimates. The estimated amounts are subject to certain risks, uncertainties and assumptions. Should one or more of these risks or uncertainties materialize or should underlying assumptions prove incorrect, the actual Allowed amounts of Claims may vary from those estimated therein.

8.7 *Risks Associated with the Debtor’s Business and Industry*

The risks associated with the Debtor’s business and industry include, but are not limited to, the following: (i) domestic and foreign supplies of oil and natural gas; (ii) price and quantity of foreign imports of oil and natural gas; (iii) level of global oil and natural gas exploration and production activity; (iv) the effects of government regulation and permitting and other legal

requirements; (v) competition in the oil and gas industry; (vi) uncertainties in estimating our oil and gas reserves and net present values of those reserves; (vii) uncertainties in exploring for and producing oil and gas, including exploitation, development, drilling and operating risks; (viii) weather conditions; (ix) technological advances affecting oil and natural gas production and consumption; and (x) overall U.S. and global economic conditions.

8.8 *Certain Tax Considerations, Risks and Uncertainties*

THERE ARE A NUMBER OF MATERIAL INCOME TAX CONSIDERATIONS, RISKS AND UNCERTAINTIES ASSOCIATED WITH CONSUMMATION OF THE PLAN. INTERESTED PARTIES SHOULD READ CAREFULLY THE DISCUSSION SET FORTH IN THIS DISCLOSURE STATEMENT FOR A DISCUSSION OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES BOTH TO THE DEBTOR AND TO HOLDERS OF CLAIMS THAT ARE IMPAIRED UNDER THE PLAN.

ARTICLE IX VOTING PROCEDURES AND REQUIREMENTS

9.1 *Introduction*

Detailed instructions for voting on the Plan are provided with the Ballots accompanying this Disclosure Statement. For purposes of the Plan, only holders of record of Claims in the following Classes, as of the Voting Record Date, are entitled to vote: Classes 1, 2, 3, 4 and 5.

If your Claim is **not** in Classes 1, 2, 3, 4 and 5, you are not entitled to vote on the Plan. All Equity Interests are not entitled to vote.

If your Claim is in Class 1, 2, 3, 4 and 5, you should read your ballot and follow the listed instructions carefully. Please use only the ballot that accompanies this Disclosure Statement.

9.2 *Voting*

In order for your vote to be counted, your signed ballot must be actually received at the following address before the Voting Deadline of _____, 2016, at [_____] p.m. (prevailing Central time):

By Hand Delivery, Certified, Registered, or Regular Mail, or Overnight Carrier:
Whistler Energy Claims Processing
c/o UpShot Services LLC
8269 E. 23rd Avenue, Suite 275
Denver, CO 80238

UNLESS THE BALLOT IS ACTUALLY RECEIVED BY THE BALLOTING AGENT ON OR PRIOR TO THE VOTING DEADLINE, SUCH BALLOT WILL BE REJECTED AS INVALID AND WILL NOT BE COUNTED AS AN ACCEPTANCE OR REJECTION OF THE PLAN.

9.3 *Reservation of Rights*

THE DEBTOR RESERVES THE RIGHT, WITH THE APPROVAL OF THE OTHER PLAN PROPONENTS, AND WITHOUT NOTICE EXCEPT AS MAY BE REQUIRED UNDER APPLICABLE LAW, TO EXTEND THE SOLICITATION PERIOD OR TERMINATE THE SOLICITATION OF VOTES ON THE PLAN.

9.4 *Waivers of Defects, Irregularities, etc.*

Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawals of ballots will be determined by the Debtor in its sole discretion, which determination will be final and binding. The Debtor reserves the right to reject any and all ballots submitted by any creditors not in proper form, the acceptance of which would, in the opinion of the Debtor or its counsel, be unlawful. The Debtor further reserves its rights to waive any defects or irregularities or conditions of delivery as to any particular ballot by its creditors. The interpretation (including the ballot and the respective instructions thereto) by the Debtor, unless otherwise directed by the Bankruptcy Court, will be final and binding on all parties. Unless waived, any defects or irregularities in connection with deliveries of ballots must be cured within such time as the Debtor (or the Bankruptcy Court) determine. Neither the Debtor nor any other person will be under any duty to provide notification of defects or irregularities with respect to deliveries of ballots nor will any of them incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) will be invalidated.

**ARTICLE X
CONCLUSION**

The Debtor recommends that holders of Claims in Classes 1, 2, 3, 4 and 5 vote to accept the Plan and to evidence such acceptance by returning their signed ballots so that they will be received before the Voting Deadline of _____, 2016, at [_____] p.m. (prevailing Central time).

Dated: October 20, 2016

Respectfully submitted, as of the date first set forth above,

WHISTLER ENERGY II, LLC

By: 

Name: Robert E. Wichert

Title: Interim Chief Executive Officer

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

IN RE:

WHISTLER ENERGY II, LLC,

DEBTOR.

CASE NO. 16-10661

SECTION B

CHAPTER 11

**JOINTLY PROPOSED CHAPTER 11 PLAN OF REORGANIZATION
OF WHISTLER ENERGY II, LLC DATED OCTOBER 19, 2016**

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Dated: October 19, 2016

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INTRODUCTION AND OVERVIEW

The Debtor¹ (Whistler Energy II, LLC), as debtor and debtor-in-possession, Apollo, the UCC, and Commerce propose the following joint plan of reorganization pursuant to Chapter 11 of Title 11 of the United States Bankruptcy Code for the resolution of outstanding Claims against and Equity Interests in the Debtor. Reference is made to the Disclosure Statement for this Plan for a discussion of the Debtor's history, businesses, assets, results of operations, projections for future operations, risk factors, and a summary and analysis of this Plan and certain related matters, including procedures for voting on the Plan. The Plan Proponents are the proponents of this Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL CREDITORS AND PARTIES IN INTEREST ARE ENCOURAGED TO
CONSULT THE DISCLOSURE STATEMENT BEFORE VOTING TO ACCEPT OR REJECT
THIS PLAN.

Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code, Rule 3019 of the Bankruptcy Rules and Article IX of this Plan, the Plan Proponents reserve the right to alter, amend, modify, revoke or withdraw this Plan prior to its substantial consummation.

ARTICLE I. DEFINITIONS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, DEFINED TERMS

A. Rules of Interpretation, Computation of Time, and Governing Law

For purposes herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) any reference herein to an existing document or exhibit Filed, or to be Filed, shall mean such document or exhibit, as it may have been or may be amended, modified or supplemented; (d) unless otherwise specified, all references herein to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits hereof or hereto; (e) the words "herein," "hereof" and "hereto" refer to the Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (h) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (i) all references to docket numbers of documents Filed in the Chapter 11 Case are references to the docket numbers under

¹ Please refer to Article I B., for the defined terms that are used in this Plan, and note that certain additional defined terms are located within the body of this Plan where indicated.

the Bankruptcy Court's CM/ECF system. References in the Plan to the Debtor shall mean the Debtor or any successor thereto, by merger, consolidation, or otherwise, on or after the Effective Date, as applicable.

In computing any period of time prescribed or allowed hereby, the provisions of Bankruptcy Rule 9006(a) shall apply as though the Plan is an order of the Bankruptcy Court.

Except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, and subject to the provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflict of laws thereof; *provided*, that corporate or limited liability company governance matters relating to the Debtor shall be governed by the laws of the state of incorporation or formation (as applicable) of the Debtor and Reorganized Debtor.

All references in the Plan to monetary figures shall refer to United States of America currency, unless otherwise expressly provided.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

Administrative Claim means (a) any Professional Fee Claim, (b) any Claim constituting a cost or expense of administration of the Bankruptcy Case asserted or authorized to be asserted in accordance with sections 503(b) and 507(a)(2) of the Bankruptcy Code during the period up to and including the Effective Date, and (c) any fees or charges assessed against the Estate pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

Administrative Claim Bar Date means with respect to Administrative Claims other than Senior Credit Facility Claims, DIP Facility Claims, Professional Fee Claims and Ordinary Course Administrative Claims, to which the Administrative Claim Bar Date shall not apply, for such Claims (a) that arose prior to September 30, 2016, on or before November 4, 2016, (b) arising after September 30, 2016, on or before the date of Ballot Deadline, or (c) with respect to either (a) or (b) above, such other date established by Final Order of the Bankruptcy Court that fixes a different Administrative Claim Bar Date.

Administrative Claim Objection Deadline means (a) for Administrative Claims Filed before the Confirmation Date, such date as established by the local rules or any scheduling order of the Bankruptcy Court or (b) for Administrative Claims Filed after the Confirmation Date, the earlier of (i) the 21st day after the filing of an Administrative Claim or the 21st day after the Administrative Claim Bar Date or (ii) such other date established by order of the Bankruptcy Court.

Administrative Claims Payment Date means, with respect to an Administrative Claim, the applicable of: (a) on the Effective Date; (b) if the Administrative Claim is not Allowed as of

the Effective Date, no later than fifteen (15) days after the date on which an order Allowing such Administrative Claim becomes a Final Order; or (c) if the Allowed Administrative Claim is an Ordinary Course Administrative Claim, pursuant to the terms and conditions of the particular transaction giving rise to such Ordinary Course Administrative Claim, without any further action by the Holders of such Ordinary Course Administrative Claim and without any further notice to or action, order, or approval of the Bankruptcy Court.

Affiliate means any Person or Entity described under section 101(2) of the Bankruptcy Code.

Allowed means that, with respect to a Claim, (i) such Claim has been listed on the Schedules, as such Schedules may be amended by the Debtor from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and no contrary Proof of Claim has been filed, (ii) a Proof of Claim with respect to such Claim has been timely filed and no objection thereto has been interposed timely, or an objection thereto has been interposed timely and such Claim has been allowed in whole or in part by a Final Order, (iii) such Claim has been expressly allowed by a Final Order or under this Plan, or (iv) such Claim has been compromised, settled, or otherwise resolved pursuant to the authority granted to the Debtor pursuant to a Final Order of the Bankruptcy Court or under this Plan; provided, however, that Claims allowed solely for the purpose of voting to accept or reject this Plan pursuant to an order of the Bankruptcy Court shall not be considered an Allowed Claim under this Plan. For the avoidance of doubt, if a Proof of Claim has been timely filed and no objection thereto has been interposed timely, such Proof of Claim amount shall be the Allowed amount of such Claim.

Allowed Claim means a Claim that is Allowed.

Apollo means Apollo Global Management, LLC or one or more of its Affiliates including Apollo Franklin Partnership, L.P., Apollo Centre Street Partnership, L.P., Apollo Credit Opportunity Fund III AIV I LP, ANS Holdings (WE), Ltd., and Apollo Special Opportunities Managed Accounts, L.P.

Argo means Argonaut Insurance Company, (A/K/A Argo Surety).

Argo Claims means the contingent and unliquidated indemnity Claims of Argo as may exist against the Debtor under a certain General Indemnity Agreement dated July 3, 2013, related to the issuance by Argonaut Insurance Company of certain supplemental and area wide bonds in favor of the United States Department of the Interior (BOEM), Mobil Oil Exploration and Producing Southwest Inc. and W&T Offshore, Inc., which Claims are submitted as (a) a Secured Claim, Secured by the Debtor's Cash Collateral in the approximate amount of Seventy-Five Million Five Hundred Sixty-Eight Thousand Eight Hundred Ninety-Five and 10/100ths Dollars (\$75,568,895.10), and (b) an Unsecured Claim in the amount of Three Million Two Hundred Eleven Thousand One Hundred Three and 54/100ths Dollars (\$3,211,103.54). Argo also includes as statutory bases for its Claims sections 503 and 507(a)(8), neither of which are applicable to the Argo Claims. The Argo Secured Claim is Unimpaired and will be treated as a Class 6 Claim, while the Argo Unsecured Claim is deemed Impaired and will be treated as a Class 4 Claim.

Assigned Causes of Action means all Causes of Action assertable by the Debtor as Debtor and Debtor in Possession, subject to the waiver and release of any Causes of Actions against any party under this Plan.

Assumed Executory Contracts and Unexpired Leases means any Executory Contracts and Unexpired Leases assumed by the Debtor or the Reorganized Debtor pursuant to section 365 of the Bankruptcy Code.

Avoidance Actions means any and all Causes of Action which a trustee, debtor-in-possession, an estate, or other legal representative or appropriate party-in-interest including without limitation the Litigation Trustee may assert, for avoidance, subordination, recovery, collection, setoff, avoidance based objection, maintenance of liens and transfers for the Estate and for the Litigation Trustee on behalf of the Litigation Trust as the representative of the Estate under section 1123 of the Bankruptcy Code, under sections 502, 510, 541, 542, 543, 544, 545, 547, 548 through 551, and 553 of the Bankruptcy Code, or under similar or related state or federal statutes, civil law, and common law, including fraudulent transfer laws, and also including the Debtor's rights of recoupment, contribution, or indemnity in connection with the foregoing (as those terms are defined by the non-bankruptcy law of any relevant jurisdiction) whether or not litigation has been commenced as of the Effective Date to prosecute such Avoidance Actions.

Ballot means the ballot form upon which Holders of Impaired Claims who are entitled to vote under this Plan shall indicate acceptance or rejection of the Plan in accordance with the Voting Instructions.

Ballot Deadline means the date set by the Bankruptcy Court as the last date on which Ballots may be submitted.

Bankruptcy Code means Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, as now in effect or hereafter amended.

Bankruptcy Court means the United States Bankruptcy Court for the Eastern District of Louisiana.

Bankruptcy Rules means the Federal Rules of Bankruptcy Procedure, FED. R. BANKR. P. 1001 *et seq.*, as promulgated under 28 U.S.C. § 2075, and the Federal Rules of Civil Procedure, FED. R. CIV. P. 1 *et seq.*, and the Local Rules of the Bankruptcy Court, as applicable to the Bankruptcy Cases, and as now in effect or hereafter amended.

Bar Date means the applicable deadline to File Claims or expenses in this Chapter 11 Case, as fixed by order of the Bankruptcy Court or this Plan, including the Bar Date for Administrative Claims, General Unsecured Claims, Gap Claims, Professional Fee Claims, Rejection Claims, and Governmental Unit Claims.

Board of Managers means the board of managers of the Debtor prior to the Effective Date.

Business Day means any day other than a Saturday, a Sunday, "legal holidays" (as

defined under Bankruptcy Rule 9006(a)), or any other day on which banking institutions in New Orleans, Louisiana are required or authorized to close by law or executive order.

CapEx Amount means proceeds from the Exit Facility for future funding availability to recommence drilling of the Erato Well (at the sole discretion of Apollo), in the projected approximate amount of Twenty Million and No/100ths Dollars (\$20,000,000), plus any additional amounts as may be loaned under any amendment and/or restatement of the Exit Facility in the event additional funds are determined by the Reorganized Debtor, with the approval of Apollo to be needed for completion of the Erato Well.

Cash means legal tender of the United States of America, cash equivalents, and readily marketable securities or instruments, including, but not limited to, bank deposits, accounts, certified or cashier's checks, timed certificates of deposit issued by any bank, commercial paper, and readily marketable direct obligations of the United States of America or agencies or instrumentalities thereof.

Causes of Action means any and all of the Debtor's, the Estate's, and the Reorganized Debtor's actions, causes of action, rights, suits, counterclaims, accounts, debts, sums of money, damages, judgments, claims and demands, actions, defenses, offsets, powers, privileges, licenses, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims, whatsoever, whether known or unknown, suspected or unsuspected, whether arising under state or other non-bankruptcy law or arising under the Bankruptcy Code, in this Chapter 11 Case, or in any way related to this Chapter 11 Case, whether arising prior to, on or after the Petition Date, in contract or tort, in law, equity or otherwise, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable. Causes of Action shall include without limitation (a) derivative claims of the Debtor or the Debtor in Possession pursuant to state or non-bankruptcy law, the Bankruptcy Code or any other statute or legal theory or theory under equity, (b) Avoidance Actions, (c) the Frankel claims, (d) any rights to, claims, or causes of action for recovery under any policies of insurance issued to or on behalf of the Debtor or the Debtor in Possession, including without limitation the D&O Insurance Policies, (e) all tax refunds and insurance proceeds, (f) any rights, claims, causes of action the Debtor, the Debtor in Possession and/or the Estate against any former or current director or officer of the Debtor arising under state or other non-bankruptcy law or arising under the Bankruptcy Code, in this Chapter 11 Case, or in any way related to this Chapter 11 Case, or under and/or pursuant to any statute or legal or equitable theory that is in any manner arising from, connected with or related to any act or omission of such director or officer that occurred prior to the Effective Date, except only those Causes of Action that are specifically and expressly released as of the Effective Date under this Plan, (g) claims and defenses including those as, of and for fraud, mistake, duress, and usury, and (h) claims pursuant to section 362 of the Bankruptcy Code.

Chapter 11 Case means the chapter 11 bankruptcy case entitled, "In re Whistler Energy II, LLC," No. 16-10661, United States Bankruptcy Court, Eastern District of Louisiana.

Claim means a claim (as defined in section 101(5) of the Bankruptcy Code) against the Debtor, including, but not limited to: (a) any right to payment from the Debtor whether or not such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured,

disputed, undisputed, legal, equitable, secured or unsecured; or (b) any right to an equitable remedy for breach of performance if such performance gives rise to a right of payment from the Debtor, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured. Claim also may refer to Secured Claims, Administrative Claims, Non-Tax Priority Claims, Priority Tax Claims, and also may refer to the DIP Facility Claims.

Claims Bar Date means September 26, 2016, by which Creditors other than Governmental Units and the Holders of Administrative Claims were required to submit Proofs of Claim in the Chapter 11 Case, if the submission of a Proof of Claim was necessary for the purposes of allowance of any such Claim.

Claims Objection Bar Date means, for all Claims, the later of (a) 90 days after the Effective Date, or (b) such other period of limitation as may be specifically fixed by this Plan or a Final Order of the Bankruptcy Court for objecting to any Claim.

Claims Return means an amount equal to simple interest accruing at eight percent (8%) per annum from the Effective Date on the full principal balance of the Allowed General Unsecured Claims that are exchanged for Litigation Trust Interests (and once the Litigation Trust Interests are issued the such interest shall accrue on the Litigation Trust Beneficial Interest Principal Amount), such that should payments be made upon the Claims Return, each Holder of a Litigation Trust Interest (which will have been determined as a Pro Rata Share of one hundred percent (100%) of such Interests in the same percentage as the Pro Rata Share of the each Holder's Pro Rata Share of the Allowed General Unsecured Claims), shall receive a Pro Rata Share of the Claims Return payments.

Class means a category of Holders of Claims or Equity Interests classified by this Plan pursuant to section 1122 of the Bankruptcy Code.

Clerk means the clerk of the Bankruptcy Court.

Collateral means any property or interest in Property of the Estate or the Debtor subject to a Lien, charge, or other encumbrance to secure the payment or performance of a Claim, which Lien, charge, or other encumbrance is not subject to avoidance under the Bankruptcy Code.

Commerce means Commerce Oil, LLC.

Commerce Unsecured Claims means the General Unsecured Claim and all rights of Commerce arising under that certain Second Amended and Restated Subordinated Promissory Note, dated November 5, 2015, between the Debtor and Commerce. As of the Petition Date, the aggregate principal amount outstanding under the Subordinated Promissory Note was approximately Thirty-One Million Five Hundred Thousand and No/100ths Dollars (\$31,500,000).

Confirmation means the Entry of the Confirmation Order.

Confirmation Date means the date of Entry by the Clerk of the Confirmation Order.

Confirmation Hearing means the hearing to consider Confirmation of the Plan.

Confirmation Order means the order Entered by the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

Consenting Parties means, collectively, (a) each Holder of a Claim who has affirmatively voted to accept the Plan and (b) each Holder of a Claim who does not vote to accept or reject the Plan and is a Holder of a Claim in a Class that has voted to accept the Plan. Holders of Claims who are also Holders of Equity Interests shall be Consenting Parties with respect to such Equity Interests, if they are Consenting Parties with respect to their Claims.

Convenience Claim means (a) an Allowed General Unsecured Claim in an amount equal to or less than Twenty-Five Thousand and No/100ths Dollars, or (b) an Allowed General Unsecured Claim in a greater amount that is voted by the Ballot of the Holder of such Claim (i) to accept the Plan and (ii) to have such Claim Allowed in the amount of Twenty-Five Thousand and No/100ths Dollars for treatment as a Class 3 Claim.

Cramdown means the confirmation of this Plan pursuant to section 1129(b) of the Bankruptcy Code notwithstanding any rejection of the Plan by an impaired Class or Classes of Holders of Claims.

Creditor means any Person who holds a Claim against the Debtor.

Cure means the payment by the Debtor or as applicable the Reorganized Debtor, on or within a reasonable period of time following the Effective Date, of Cash or such other property as may be agreed upon by the parties or ordered by the Bankruptcy Court, or by a showing by the Debtor and, as applicable, the Reorganized Debtor of reasonable assurance that such amount will promptly paid with respect to the assumption of an Executory Contract or Unexpired Lease, pursuant to section 365(b) of the Bankruptcy Code, in an amount equal to all unpaid monetary obligations, without interest, or such other amount as may be agreed upon by the parties, under such Executory Contract or Unexpired Lease, to the extent such obligations are enforceable under the Bankruptcy Code and applicable non-bankruptcy law as a condition of assumption of such Executory Contract or Unexpired Lease.

Cure Claim means the Claim of any party for monetary amount alleged to be necessary to cure any default or for pecuniary loss in relation to the assumption of an Executory Contract by the Debtor or Reorganized Debtor pursuant to section 365 of the Bankruptcy Code.

Cure Notice means a notice of a proposed amount to be paid on account of a Cure Claim in connection with an Executory Contract or Unexpired Lease to be assumed or assumed and assigned under the Plan pursuant to section 365 of the Bankruptcy Code, which notice shall include (a) procedures for objecting to proposed assumptions or assumptions and assignments of Executory Contracts and Unexpired Leases, (b) Cure Claims to be paid in connection therewith, and (c) procedures for resolution by the Court of any related disputes.

D&O Insurance Policies means all unexpired directors', managers', and officers' liability insurance policies of the Debtor, including any D&O Insurance Tail Policy, with respect to directors, managers, officers, and employees of the Debtor.

D&O Insurance Tail Policy means any insurance policy acquired by the Debtor or Reorganized Debtor for tail coverage under any D&O Insurance Policy.

Debtor means Whistler Energy II, LLC.

Debtor in Possession means Whistler Energy II, LLC, as the debtor in possession in the Debtor's Chapter 11 Case.

DIP Credit Agreement means that certain Credit Agreement, dated as of June 3, 2016, as amended, modified, and restated from time to time in accordance with the terms thereof, between the Debtor, as borrower, and the DIP Lender, as lender.

DIP Facility means the Debtor's Fifteen Million and No/100ths Dollars (\$15,000,000) debtor-in-possession financing facility, and all related documents regarding or relating to such facility, by and between the Debtor, as issuer, and the DIP Lender, approved by the Bankruptcy Court pursuant to the DIP Orders.

DIP Facility Claims means any and all Claims for principal and interest, costs and fees and the "Obligations" as defined in the DIP Facility, under or related to the DIP Facility, including amounts owing pursuant to the DIP Orders.

DIP Facility Collateral means any and all Collateral securing payment of the DIP Facility Claims, as provided in the DIP Facility and the DIP Orders.

DIP Lender means the Bank of New York Mellon, as administrative agent for Apollo and Commerce as issuing Holders under the DIP Facility.

DIP Facility Liens means any and all Liens granted in favor of the DIP Lender in connection with the DIP Facility and the DIP Orders.

DIP Orders means, collectively: (a) the *Interim Order Authorizing Limited Use of Cash Collateral, Obtaining Post-Petition Credit Secured by Senior Liens, and Granting Adequate Protection to Existing Lienholders* (ECF Doc. 70); (b) the *Final Order Authorizing Limited Use of Cash Collateral, Obtaining Post-Petition Credit Secured by Senior Liens, and Granting Adequate Protection to Existing Lienholders* (ECF Doc. 110); and (c) any other order entered by the Bankruptcy Court approving or in connection with the DIP Facility.

DIP Repayment Amount means proceeds of the Exit Facility for repayment in full of the DIP Facility Claims.

Disallowed Claim means a Claim or any portion thereof that has been disallowed by Final Order.

Disclosure Statement means the *Debtor's Disclosure Statement for the Jointly Proposed Chapter 11 Plan of Reorganization of Whistler Energy II, LLC Dated October [*], 2016*, including all exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code (ECF Doc. [*]).

Disputed means, in reference to a Claim, any Claim, or any portion thereof, Disallowed, not paid pursuant to either the Plan or Final Order of the Bankruptcy Court, and (a) which has been or hereafter is listed on the Schedules as unliquidated, contingent, or disputed, and which has not been resolved by written agreement of the parties or a Final Order of the Bankruptcy Court, (b) proof of which was required to be filed by order of the Bankruptcy Court but as to which a Proof of Claim was not timely or properly filed, (c) proof of which was timely and properly submitted and which has been or hereafter is listed on the Schedules as unliquidated, disputed or contingent, (d) proof of which has been timely and properly submitted but such Claim has been designated on the Proof of Claim as unliquidated, contingent, or disputed, or in zero or unknown amount and has not been resolved by written agreement of the parties or a Final Order of the Bankruptcy Court; (e) that is disputed in accordance with the provisions of the Plan, or (f) as to which the Debtor, the Reorganized Debtor or the Litigation Trustee, as applicable, have interposed a timely objection or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any orders of the Bankruptcy Court, or is otherwise disputed by the Debtor, the Reorganized Debtor or the Litigation Trustee, as applicable, in accordance with applicable non-bankruptcy law including any action or proceeding pending in a non-bankruptcy forum, which objection, request for estimation, or dispute has not been withdrawn or determined by a Final Order; *provided, however*, that for purposes of determining whether a particular Claim is a Disputed Claim prior to the expiration of any period of limitation fixed for the interposition by the Debtor, the Reorganized Debtor or the Litigation Trustee, as applicable, of objections to the allowance of Claims, any Claim that is not an Allowed Claim shall be deemed a Disputed Claim.

Distribution means any transfer, payment under or in accordance with the Plan, the corporate documents of the Reorganized Debtor, or the Liquidating Trust Agreement of Cash or other property.

Distribution Date(s) means the date or dates, occurring on or as soon as reasonably practicable after the Effective Date, upon which Distributions are made pursuant to the terms of the Plan to Holders of Allowed Claims, and with respect to the Distributions to Holders of Class 3 Claims and Distributions of the Litigation Trust Interests, within ten (10) Business Days after the last date upon which the last Class 3 Convenience Class Claim or the last Class 4 General Unsecured Disputed Claim becomes either an Allowed or Disallowed Class 3 Convenience Claim or Class 4 General Unsecured Claim.

Effective Date means the first Business Day that is at least one (1) full Business Day after the Confirmation Order becomes a Final Order and all conditions precedent to the Effective Date have been consummated or waived pursuant to Article XII, hereof.

Effective Date Notice means the notice to be given by counsel for (i) the Debtor, (ii) Apollo and (iii) the UCC of the occurrence of the Effective Date. The Effective Date Notice shall identify the Litigation Trustee.

Entity means an entity defined in section 101(15) of the Bankruptcy Code.

Entry or Entered means entry or entered by the Clerk into the records and dockets of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

Equity Interest or **Interest** means any “equity security” of/in the Debtor as defined under section 101(16) of the Bankruptcy Code, including any warrant, option, or right, contractual or otherwise to receive or acquire and equity interest in the Debtor.

Erato Well means that oil and gas well described and also known as EW 0988 – A13, API No. 60-811-40099-01, which was spud on November 23, 2015 and was temporarily abandoned as of June 29, 2016.

Estate means the bankruptcy estate created for the Debtor upon the commencement of the Chapter 11 Case pursuant to section 541 of the Bankruptcy Code, or thereafter acquired as provided in section 541 or any other applicable section of the Bankruptcy Code.

Executory Contracts means executory contracts as such term is used in section 365 of the Bankruptcy Code.

Exit Facility means the new first lien senior secured revolving loan facility between the Reorganized Debtor and Apollo, as it may be amended and/or amended and restated from time to time to be issued in the amount of Seventy-Five Million and No/100ths Dollars (\$75,000,000) or such amount as Apollo determines to be the amount (i) upon which the Reorganized Debtor can make interest payments timely and (ii) in connection with which the Reorganized Debtor can maintain compliance with all covenants, in such form agreeable to Apollo (which form may be and include an amendment and restatement of the Note Purchase Agreement Documents). The Exit Facility shall bear interest at eight percent (8%) Per Annum, such interest to be paid monthly, in cash and secured by a first Lien in, to and upon the Exit Facility Collateral, and shall have a maturity date Four (4) years after the effective date of the Exit Facility.

Exit Facility Agent means the administrative agent and collateral agent under the Exit Facility as agent for Apollo, or any successor agent thereto, solely in its capacity as such.

Exit Facility Agent Discretion means the authority of the Exit Facility Agent, acting at the direction of Apollo (and as applicable any other holders), hereby expressly granted under this Plan, to direct disbursement of the proceeds of Litigation Trust Collateral by the Litigation Trustee to either (i) the Exit Facility Agent for application toward payment of the Exit Facility or (ii) Apollo for the account of the Reorganized Debtor for application as a Distribution toward the Preferred Amount.

Exit Facility Collateral means all of the Property of the Estate, the Debtor, the Reorganized Debtor and the Litigation Trust that is DIP Facility Collateral, Note Purchase Agreement Collateral and Litigation Trust Collateral.

Exit Facility Documents means the documents comprising the Exit Facility and any other guarantee, security, and relevant documentation with respect to the Exit Facility, each in form and substance acceptable to Apollo.

Exit Facility Liens means the Liens upon the Exit Facility Collateral to secure payment of the Exit Facility, subject to the Exit Facility Agent Discretion.

Fee Application means an application to the Bankruptcy Court for allowance of a

Professional Fee Claim pursuant to sections 328 or 330 of the Bankruptcy Code and Bankruptcy Rule 2016(a).

Fees means any reasonable and necessary fees, charges, or expenses, including Professional Fee Claims and Claims arising under any contract, Executory Contract, or any other form of agreement.

File, Filing, or Filed means file, filing or filed with the Clerk into the record of the Chapter 11 Case in accordance with the applicable Bankruptcy Rules.

Final Decree means the decree contemplated under Bankruptcy Rule 3022.

Final Order means an order of the Bankruptcy Court or court of competent jurisdiction which, not having been stayed by order of a court of competent jurisdiction, has become conclusive of all matters adjudicated thereby and is in full force and effect.

Frankel Claims means all potential Causes of Action held by the Debtor and Debtor in Possession against the Debtor's former Chief Executive Officer and member of the Board of Managers, Scott A. Frankel, except with respect to the specific Cause of Action asserted against Scott A. Frankel in the UCC Adversary Proceeding, which shall be dismissed with prejudice as set forth in this Plan, but with full reservation of any and all other claims and Causes of Action against Scott A. Frankel.

Freepoint means Freepoint Commodities, LLC.

Gap Claims means an Allowed Priority Non-Tax Claim against the Debtor arising in the ordinary course of the Debtor's business during the time period between the filing of the Involuntary Petition and the Entry of the Order for Relief.

General Unsecured Claim means any Claim that is not an Administrative Claim, Priority Tax Claim, Priority Non-Tax Claim, Senior Credit Facility Claim, Other Secured Claim or DIP Facility Claims.

Governance Documents means the limited liability company agreement (or any other formation and organizational documents) of the Debtor in effect as of the Petition Date, as such documents may be amended from time to time, and any such documents put into effect subsequent to the Petition Date.

Governmental Unit shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

Governmental Unit Bar Date means November 21, 2016, the date by which governmental units holding or asserting a Claim against the Debtor arising prior to the Petition Date shall file a Proof of Claim in the Chapter 11 Case.

Holder means a Person or Entity holding an Equity Interest or Claim.

Impaired means a Claim or Equity Interest that is impaired within the meaning of

section 1124 of the Bankruptcy Code and applicable case law.

Initial Litigation Trust Funds shall mean Cash in the amount Twenty-Five Thousand and No/100ths Dollars (\$25,000.00).

Insider means any Person or Entity described under section 101(31) of the Bankruptcy Code.

Interim Compensation Order means the order entered by the Bankruptcy Court (ECF Doc. 268), authorizing the Debtor, on an interim basis, to compensate the Professionals for services rendered through the Confirmation Date and to reimburse the Professionals for expenses incurred in connection with any such services.

Interior Notice means the *Notice to Lessees and Operators of Federal Oil and Gas, and Sulfur Leases, and Holders of Pipeline Right-Of-Way And Right-Of-Use and Easement Grants in the Outer Continental Shelf* issued by the United States Department of the Interior Bureau of Ocean Energy Management (“BOEM”), effective September 12, 2016, pursuant to which the Interior gave notice to the Debtor that the Debtor’s decommissioning liabilities as operator of the Leasehold Interests were reassessed on or about October 11, 2016 with such reassessment suggesting that the Debtor may receive demand from BOEM and be required to post additional supplemental bonding as security for the decommissioning liabilities in the amount of approximately Forty-Seven Million and No/100th Dollars (\$47 million), which after reductions for bonding already in place in favor of private third parties could be reduced by approximately Fifteen Million and No/100th Dollars (\$15 million) resulting in a possible increase in supplemental bonding of an additional Thirty-Two Million One Hundred and No/100th Dollars (\$32.1 million).

Interior Reassessment means the reassessment by the United States Department of Interior Bureau of Safety and Environmental Enforcement (“BSEE”) and/or BOEM of the Debtor’s decommissioning liabilities as operator of the Leasehold Interests that are with respect to the Debtor the subject of the Interior Notice, to which challenge will be made by the Debtor in accordance with the terms of the Interior Notice and/or otherwise. The potential effects of the Interior Assessment, if Interior Reassessment is not reduced are shown on **Exhibit 1** to this Plan.

Internal Revenue Code means title 26 of the United States Code, 26 U.S.C. § 1 *et seq.*, as now in effect or hereafter amended.

Leasehold Interests means those oil and gas properties in which the Debtor or Reorganized Debtor owns a leasehold interest, including, but not limited to, (a) One Hundred Percent (100%) of the record title interest in Lease OCS-G 04940, Green Canyon Block 18, with a 74.64285% operating rights interest from 17,000’ TVDSS down to 25,000’ TVDSS therein, and with a 0.00000% operating rights interest from 25,000’ TVDSS down to 99,999’ TVDSS therein; (b) One Hundred Percent (100%) of the record title interest in Lease OCS-G 14021, Green Canyon Block 60, with a 55.00000% operating rights interest from 17,000’ TVDSS down to 25,000’ TVDSS therein, and with a 0.00000% operating rights interest from 25,000’ TVDSS down to 99,999’ TVDSS therein; (c) One Hundred Percent (100%) of the record title interest in Lease OCS-G 05809, Ewing Bank Blocks 944/988, with a 73.33333% operating rights interest in

the S/2 of the S/2 of Ewing Bank Block 988 from 17,000' TVDSS down to 25,000' TVDSS therein, with a with a 0.00000% operating rights interest in the S/2 of the S/2 of Ewing Bank Block 988 from 25,000' TVDSS down to 99,999' TVDSS therein, and with a 0.00000% operating rights interest in all of Ewing Bank Block 944 from the surface down to 99,999' TVDSS, and with a 0.00000% operating rights interest in the N/2 and the N/2 of the S/2 of Ewing Bank Block 988 from the surface to 99,999' TVDSS; and (d) Forty-Five Percent (45%) of the record title interest in Lease OCS-G 34961, Green Canyon Block 19.

Lien or **Liens** means "lien" as defined in section 101(37) of the Bankruptcy Code, including without limitation mortgages, security interests, privileges, conditional sale or other title retention agreements, pledges, judgments, encumbrances, easements, restrictions or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, and whether imposed by agreement, understanding, law, equity or otherwise and whether existing before or after commencement of this Chapter 11 Case.

Litigation Trust means the trust established on the Effective Date pursuant to the Litigation Trust Agreement in accordance with the terms specified in this Plan. The Litigation Trust Assets shall be transferred to and vest in the Litigation Trust on the Effective Date.

Litigation Trust Agreement means the trust agreement pursuant to which the Litigation Trust is established.

Litigation Trust Assets means the ORRI, the NPI, the Assigned Causes of Action, and any other assets vested in the Litigation Trust under this Plan.

Litigation Trust Beneficiaries means Holders of Allowed Class 4 Claims.

Litigation Trust Beneficial Interest Principal Amount means the principal balance of the Allowed General Unsecured Claims of the Litigation Trust Beneficiaries as of the Effective Date (whether Allowed prior to, on or after the Effective Date).

Litigation Trust Collateral means those Litigation Trust Assets, Assigned Causes of Action and/or the percentage interests thereof that as of the Effective Date are Note Purchase Agreement Collateral and DIP Facility Collateral, which upon the Effective Date shall be Exit Facility Collateral. For the avoidance of doubt, Litigation Trust Collateral shall include without limitation (a) one hundred percent (100%) of the net proceeds of the Nabors Avoidance Action, (b) fifty-five percent (55%) of the net proceeds of the Remaining Avoidance Actions, and (c) one hundred percent (100%) of the net proceeds derived from the Litigation Trust's pursuit of the Frankel Claims in excess of the amount of the proceeds recoverable and paid from and under the D&O Insurance Policies, but **shall not** include (i) forty-five percent (45%) of the proceeds from the Remaining Avoidance Actions, (ii) the ORRI, (iii) the NPI, or (iv) one hundred percent (100%) of the net proceeds received by the Litigation Trustee from the Litigation Trust's pursuit of the Frankel Claims from and under the proceeds recoverable from the D&O Insurance Policies. The Litigation Trust Collateral is to be held by the Litigation Trustee subject to the Security Interests securing the payment of the Exit Facility, as Exit Facility Collateral.

Litigation Trust Distributions means (a) distributions by the Litigation Trustee of the Litigation Trust Interests, and (b) distributions from the Litigation Trustee to the Litigation Trust Beneficiaries.

Litigation Trust Interests means, with respect to the Litigation Trust, the interests created in the Litigation Trust which entitles Litigation Trust Beneficiaries to receive Litigation Trust Distributions in accordance with the Litigation Trust Agreement.

Litigation Trust Loan means the loan to be made on or after the Effective Date by Apollo, in the non-revolving availability amount of Five Hundred Thousand and No/100ths Dollars (\$500,000) at an interest rate to be determined by the agreement of the Litigation Trustee and Apollo for the purpose of providing the Litigation Trust with loan availability with which to pay the fees and costs of counsel for the Litigation Trust, to be retained on an hourly rate basis to object to and resolve General Unsecured Claims, and to pursue Assigned Causes of Action and otherwise liquidate Litigation Trust Assets, subject to and in accordance with this Plan. The Litigation Trust Loan shall be secured by a first priority Security Interest in, to and upon the Litigation Trust Loan Collateral.

Litigation Trust Loan Collateral means all Assigned Causes of Action, including such as are Litigation Trust Collateral.

Litigation Trustee means that person or entity identified in the Litigation Trust Agreement including any successor trustee. The Litigation Trustee shall act as the representative of the Estate pursuant to section 1123(b)(3)(B) of the Bankruptcy Code for the purposes of pursuing the Assigned Causes of Action and with respect to the other Litigation Trust Assets in accordance with the terms specified herein and in the Litigation Trust Agreement. The Litigation Trustee shall be deemed to be a party in interest within the meaning of section 1109(b) of the Bankruptcy Code and the representative of the Estate for all purposes related to or in connection with the Assigned Causes of Action and the other Litigation Trust Assets. To the extent applicable, the Litigation Trustee shall be a party in interest with standing to object to any General Unsecured Claim as provided in this Plan.

Nabors means Nabors Offshore Corporation, together with its Affiliates.

Nabors Avoidance Action means any Avoidance Action against Nabors.

New Equity means the Series A Units, the Series B Units and the Series C Units.

Note Purchase Agreement means that certain Note Purchase Agreement (as amended, restated, and modified), dated as of July 11, 2013, among the Debtor, the Bank of New York Mellon, as administrative agent, and Apollo.

Note Purchase Agreement Collateral means any Collateral securing obligations associated with the Senior Credit Facility Claims.

Note Purchase Agreement Collateral Documents means any and all documents executed by the Debtor evidencing a pledge of, or granting a security interest or Lien in Collateral to secure the Senior Credit Facility Claims.

Note Purchase Agreement Loan Documents means the Note Purchase Agreement, the Note Purchase Agreement Collateral Documents, and any and all related security agreements and other documents and agreements evidencing obligations of the Debtor arising under or related to the Note Purchase Agreement.

Notice and Claims Agent means Upshot Services LLC as Noticing, Claims and Balloting Agent for the Debtor (See ECF Doc. 176), in its capacity as such.

NPI means a three percent (3.0%) net profits interest in the Erato Well that shall be conveyed to the Litigation Trustee for the benefit of Litigation Trust Beneficiaries pursuant to the terms and conditions of the NPI Conveyance. The NPI Conveyance shall provide, *inter alia*, that: (a) the conveyance of the NPI shall be considered a conveyance of immovable (i.e., real) property; (b) the NPI shall be conveyed free and clear of any and all liens and encumbrances; (c) the NPI shall survive any transfer or sale of the Leasehold Interests by the Reorganized Debtor to any third party; (d) the NPI Conveyance shall be recorded in the mortgage records of Terrebonne Parish, State of Louisiana, the Bureau of Ocean Energy Management, and any other applicable Governmental Unit; (e) NPI shall commence after payout of an amount equal to (i) the amount equal to the actual amount paid by the Debtor in connection with the drilling of the Erato Well prior to the Effective Date; plus, (ii) the amount of monies paid by the Reorganized Debtor after the Effective Date that are directly attributable to the costs and expenses associated with drilling and completion of the Erato Well; (f) the Litigation Trustee, as Holder of the NPI, shall not be liable to any third parties to the extent that the costs associated with drilling and completion and operations of the Erato Well exceed the value of production from such Well, and shall not be held liable for any liability arising out of plugging and abandonment obligations of the working interest owners of the Erato Well; and (g) the NPI automatically shall terminate upon payment of the Litigation Trust Beneficial Interest Principal Amount plus the Claims Return.

NPI Conveyance means the conveyance documents in a form reasonably acceptable to Apollo, the UCC and the Debtor by which the NPI will be conveyed to the Litigation Trustee by the Reorganized Debtor.

ORRI means an 875/1000 percent (0.875%) term overriding royalty interest in the Leasehold Interests that shall be conveyed to the Litigation Trustee for the benefit of Litigation Trust Beneficiaries pursuant to the terms and conditions of the ORRI Conveyance. The ORRI Conveyance shall provide, *inter alia*: (a) the conveyance of the ORRI shall be considered a conveyance of immovable (i.e., real) property; (b) the ORRI shall be conveyed free and clear of any and all liens and encumbrances; (c) the ORRI shall survive any transfer or sale of the Leasehold Interests by the Reorganized Debtor to any third party; (d) the ORRI Conveyance shall be recorded in the mortgage records of Terrebonne Parish, State of Louisiana, the Bureau of Ocean Energy Management, and any other applicable Governmental Unit; (e) the ORRI shall automatically terminate on the earliest of (i) December 31, 2026, (ii) upon the receipt by the Litigation Trustee of an aggregate amount equal to Two Million Two Hundred Fifty Thousand and No/100ths Dollars (\$2,250,000) on account of the ORRI, and (iii) the Litigation Trustee has paid the Litigation Trust Beneficial Interest Principal Amount plus the Claims Return to the Litigation Trust Beneficiaries.

ORRI Conveyance means the conveyance documents in a form reasonably acceptable to

Apollo, the UCC and the Debtor by which the ORRI will be conveyed to the Litigation Trustee by the Reorganized Debtor.

Order for Relief means the order for relief for the Debtor entered by the Bankruptcy Court in the Chapter 11 Case (ECF Doc. 59).

Ordinary Course Administrative Claims means any Administrative Claims that arise in the ordinary course of the Debtor's business, including Administrative Claims arising from or with respect to the sale of goods or services on or after the Petition Date in connection with ordinary business terms of the parties, in connection with which neither the Debtor nor party has a claim that the other is in default.

Other Secured Claim means a Secured Claim other than the Senior Credit Facility Claims and the DIP Facility Claims, but only if and to the extent the Bankruptcy Court issues a Final Order determining that such Claim is a Secured Claim.

Paydown/Refinancing Payment means the proceeds from the Exit Facility paid toward and reducing the Senior Credit Facility Claims.

Per Annum means for a calendar year of 360 days.

Person means any natural person or juridical entity to the broadest extent the term "person" is defined under section 101(41) of the Bankruptcy Code.

Petition Date means March 24, 2016.

Plan means this means this *Jointly Proposed Chapter 11 Plan of Reorganization of Whistler Energy II, LLC Dated October [*], 2016*, including the Plan Supplement which is incorporated herein by reference and made part of this Plan as if set forth herein, as each may be modified, supplemented, or waived from time to time in accordance with the respective terms thereof.

Plan Documents means, collectively, the documents and agreements (and the exhibits, schedules, annexes and supplements thereto) necessary to implement, or entered into in connection with, the Plan, including, without limitation, the Disclosure Statement, the Disclosure Statement Order, the Plan, the Plan Supplement(s), the Litigation Trust Agreement, and each of the exhibits and schedules to the Plan.

Plan Proponents means the Debtor, Apollo, Commerce, Freepoint and the UCC.

Plan Supplement means the compilation of documents and forms of documents, schedules, and exhibits to the Plan, to be Filed at least ten (10) calendar days before the Confirmation Hearing, and any additional documents or schedules Filed before the Effective Date as supplements or amendments to the Plan Supplement, including, without limitation, the Litigation Trust Agreement, the ORRI Conveyance, the NPI Conveyance, the Exit Facility Documents and documents relating to the New Equity (collectively the "Plan Supplement Documents"). Any reference to the Plan Supplement in this Plan shall include each of the documents identified above. The Plan Supplement Documents may be amended with

consent of the Plan Proponents through the Effective Date; provided that the Litigation Trust Agreement can be amended only with the consent of the UCC and Apollo.

Post-Petition means any date on or after the Petition Date.

Preferred Amount means the sum of the Unreturned Capital and any interest or fees that would have been payable on account of the Unreturned Capital as of the date of any distribution to Series A Unitholders had such Unreturned Capital been principal under the Exit Facility.

Preferred Return means simple interest accruing at 10% per annum from the Effective Date on the Preferred Amount.

Pre-Petition means any date before the Petition Date.

Priority Non-Tax Claim means any Claim given priority in payment pursuant to section 507 of the Bankruptcy Code including without limitation Gap Claims under section 507(a)(3) of the Bankruptcy Code, but not including Priority Tax Claims and Administrative Claims.

Priority Tax Claim means any Claim (or portion of a Claim) of a Governmental Unit entitled to priority under section 507(a)(8) of the Bankruptcy Code.

Pro Rata Share means, at any time, the proportion that the amount of a Claim in a particular Class or Classes (or portions thereof, as applicable) bears to the aggregate amount of all Claims (including Disputed Claims) in such Class or Classes, unless the Plan provides otherwise.

Professional means a professional person, as that term is used in section 327 and 1103 of the Bankruptcy Code.

Professional Fee Claim means a Claim that is an Administrative Claim, for compensation or reimbursement of expenses of a Professional retained in the Bankruptcy Case, and requested in accordance with sections 326, 327, 328, 330, 331, 503(b), and/or 1103 of the Bankruptcy Code.

Professional Fee Claim Bar Date means thirty (30) days after the occurrence of the Effective Date.

Professional Fee Claim Objection Bar Date means (a) the twenty-first (21st) day after the filing of a request for the allowance of a Professional Fee Claim; or (b) such other date as established by Final Order of the Bankruptcy Court.

Proof of Claim means a Person's written statement to show the basis for and amount of that person's Claim and submitted in accordance with the applicable Bar Date to the Notice and Claims Agent.

Property of the Estate means all property or interests in property of the Debtor and its Estate, of every type and nature pursuant to section 541 of the Bankruptcy Code and applicable case law.

Rejection Claim means any Claim arising out of the rejection of an Unexpired Lease or Executory Contract pursuant to section 365 of the Bankruptcy Code. Allowed Rejection Claims are classified and shall be treated as General Unsecured Claims.

Remaining Avoidance Actions means all Avoidance Actions other than the Nabors Avoidance Action.

Reorganized Debtor means the Debtor after the Effective Date.

Retained Causes of Action List means the non-exhaustive/exclusive list attached to the Plan as **Exhibit 2** of Causes of Action to be retained under the Plan.

Schedules mean the schedules of assets and liabilities, schedules of executory contracts, and the statement of financial affairs as the Bankruptcy Court requires a debtor to file pursuant to section 521 of the Bankruptcy Code, the Official Bankruptcy Forms and the Bankruptcy Rules, which have been Filed by the Debtor, as they may have been and be amended and supplemented from time to time.

Secured Claim means a Claim against the Debtor (a) secured by a valid, perfected, and unavoidable Lien on Collateral or (b) subject to setoff under sections 553, 555, 556, 559, 560 and 561 of the Bankruptcy Code, in each case to the extent of the value of the Collateral or to the extent of the amount subject to setoff, as applicable, as determined in accordance with section 506(a) of the Bankruptcy Code or as otherwise agreed to, in writing, by the Debtor, as the case may be, and the holder of such Claim; provided, however, that, to the extent that the value of such interest is less than the amount of the Claim which has the benefit of such security, the unsecured portion of such Claim shall be treated as a General Unsecured Claim unless, in any such case, the Class of which such Claim is a part makes a valid and timely election in accordance with section 1111(b) of the Bankruptcy Code to have such Claim treated as a Secured Claim to the extent Allowed.

Securities Act means the Securities Act of 1933, 15 U.S.C. § 77a *et seq.*, as now in effect or hereafter amended.

Security shall have the meaning ascribed to it in section 101(49) of the Bankruptcy Code.

Security Interest means a Lien created by agreement.

Senior Credit Facility Claims means any and all Claims arising under, on account of or in any way relating to the Note Purchase Agreement Documents.

Series A Units means ninety-two million five hundred thousand (92,500,000) units of the new membership interests in the Reorganized Debtor.

Series A Unitholders means Apollo, recipient of the Series A Units as set forth in the Plan.

Series B Units means seven million five hundred (7,500,000) units of the new

membership interests in the Reorganized Debtor.

Series B Unitholders means Commerce, recipient of the Series B Units as set forth in the Plan.

Series C Units means new membership interest units in the Reorganized Debtor to be issued, at the discretion of the board of directors of the Reorganized Debtor and Apollo, as incentive Equity in the Reorganized Debtor to new or existing management.

TDF means TDF Partners LLC.

Treasury Regulations means title 26 of the Code of Federal Regulations, 26 C.F.R. § 1.0-1 *et seq.*, as now in effect or hereafter amended.

UCC means the official committee of the holders of unsecured claims appointed by the United States Trustee, as it may be constituted from time to time.

UCC Adversary Proceeding means that Adversary Proceeding bearing Ad. Proc. # 16-01037, filed on August 12, 2016, currently pending in the Bankruptcy Court, and to be dismissed with prejudice by dismissal pleadings to be Filed within two (2) Business Days after the Effective Date. For the avoidance of doubt, the dismissal with prejudice of the UCC Adversary Proceeding shall not effectuate a release of the Frankel Claims.

Unexpired Lease means a lease, including without limitation any lease of nonresidential real property to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

Unimpaired means a Claim or Interest that is not Impaired within the meaning of section 1124 of the Bankruptcy Code and applicable case law.

United States Trustee means the United States trustee appointed under section 581(a)(3) of title 28 of the United States Code, as now in effect or hereafter amended, to serve in the Eastern District of Louisiana.

Unreturned Capital means the amount of Senior Credit Facility Claims remaining after application of the Paydown/Refinancing Payment.

Voting Classes means those Classes of Claims or Equity Interests entitled to vote to accept or reject the Plan.

Voting Deadline means the date stated in the Voting Instructions by which all Ballots must be received by the Debtor.

Voting Instructions mean the instructions for voting on the Plan contained in the section of the Disclosure Statement entitled “VOTING PROCEDURES AND REQUIREMENTS” and in the Ballots.

Working Capital Amount means proceeds from the Exit Facility for payment of

Claims, costs and expenses required to be paid to trigger the Effective Date, in the approximate amount of Five Million and No/100ths Dollars (\$5,000,000).

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ARTICLE II. UNCLASSIFIED CLAIMS

A. Unclassified Claims

As provided in section 1123(a) of the Bankruptcy Code, Administrative Claims (including Professional Fee Claims) under section 507(a)(2), Gap Claims under 507(a)(3), and Priority Tax Claims under section 507(a)(8) of the Bankruptcy Code are not classified for purposes of voting on, or receiving Distributions under this Plan. Holders of Administrative Claims (including Professional Fee Claims), Gap Claims, and Priority Tax Claims are not entitled to vote on the Plan but, rather, are treated separately in accordance with Article II of this Plan and under sections 1129(a)(9)(A) and (C) of the Bankruptcy Code. There are no Priority Claims under section 507(a)(1) or Priority Claims under sections 507 (a)(6) or (a)(7) of the Bankruptcy Code. In the event there are Allowed Claims under sections 507(a)(4) and/or (5) of the Bankruptcy Code, such Non-Tax Priority Claims will not be classified as a Class for treatment, but any such Allowed Claims will be paid as provided below.

B. Time for Filing and Treatment of Administrative Claims, Professional Fee Claims and DIP Facility Claims

Each Administrative Claim that is an Allowed Claim shall be paid in full in Cash on or as soon as practicable after the latest of (i) the Effective Date; (ii) thirty (30) days after the date that an Administrative Claim becomes an Allowed Administrative Claim; and (iii) such other date as is agreed to between the Debtor and the Holder of such Allowed Administrative Claim. Notwithstanding the foregoing, Ordinary Course Administrative Claims shall be paid either (i) in the ordinary course of business in accordance with the terms and conditions of any agreements related thereto, or (ii) as otherwise agreed among the Debtor and the Holder of such Administrative Claim. Additionally, any fees due to the U.S. Trustee's Office pursuant to section 1930 of title 28 of the United States Code will be paid as they become due.

All Professionals seeking payment of a Professional Fee Claim shall file their respective final applications for allowances of compensation for services rendered and reimbursement of expenses incurred through the Effective Date **within thirty (30) days after the occurrence of the Effective Date**. If Allowed, such Professional Fee Claim shall be paid in full in such amounts as are Allowed by the Bankruptcy Court (i) on the date such Professional Fee Claim becomes Allowed, or as soon thereafter as is practicable or (ii) upon such other terms as may be mutually agreed upon between the Holder of such Professional Fee Claim and the Debtor or, on and after the Effective Date, the Reorganized Debtor.

C. Allowance of Administrative Claims

An Administrative Claim with respect to which notice has been properly filed and served shall become an Allowed Administrative Claim only to the extent Allowed by Final Order not made the subject of appeal, or as such Claim is settled, compromised, or otherwise resolved.

EXCEPT AS OTHERWISE PROVIDED BY A FINAL ORDER PREVIOUSLY ENTERED BY THE BANKRUPTCY COURT (INCLUDING THE DIP ORDERS), OR IN

THIS PLAN, UNLESS PREVIOUSLY FILED, REQUESTS FOR PAYMENT OF ADMINISTRATIVE CLAIMS, MUST BE FILED AND SERVED ON THE DEBTOR NO LATER THAN THE ADMINISTRATIVE CLAIMS BAR DATE.

HOLDERS OF ADMINISTRATIVE CLAIMS THAT ARE REQUIRED TO FILE AND SERVE A REQUEST FOR PAYMENT OF SUCH ADMINISTRATIVE CLAIMS BY THE ADMINISTRATIVE BAR DATE THAT FAIL TO DO SO SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH ADMINISTRATIVE CLAIMS AGAINST THE DEBTOR OR ITS RESPECTIVE PROPERTY OR THE REORGANIZED DEBTOR.

D. Treatment and Payment of Allowed Non-Tax Priority Claims (Sections 507(a)(3) (Gap Claims), 507 (a)(4) and 507(a)(5))

Except to the extent that a Holder of an Allowed Priority Non-Tax Claim agrees to a less favorable treatment, (i) Allowed Gap Claims shall be paid in cash and in full on the later of (a) the Effective Date, and (b) the date on which each such Gap Claim becomes an Allowed Gap Claim, and (ii) remaining Non-Tax Priority Claims, if any, shall be paid in cash and in full on the later of (a) the Effective Date, and (b) the date on which each such Non-Tax Priority Claim becomes an Allowed Non-Tax Priority Claim. Such payment(s) shall be in full and final satisfaction, settlement, and release of and in exchange for each such Non-Tax Priority Claim. To the extent that any such Non-Tax Priority Claim exceeds the maximum amount allowed as a Priority Unsecured Claim pursuant to sections 507(a)(4) or (5), the excess amount of the Claim shall be treated as an Allowed General Unsecured Claim.

E. Treatment and Payment of Allowed Priority Tax Claims

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, and release of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code, and shall be paid in equal monthly payments of principal plus simple interest, with such interest calculated as required under applicable law for such Priority Tax Claims, for a term of forty-eight (48) months after the later of (i) the Effective Date and (ii) the date on which such Priority Tax Claim is Allowed (“Payment Trigger Date”), with the maturity date by which all payments due to be no later than the last day of the forty-eighth month after the Payment Trigger Date. At the discretion of the Reorganized Debtor payment in full of the total balance due on any such Claim can be made without penalty.

F. United States Trustee Fees

All fees payable under 28 U.S.C. § 1930 shall be paid in Cash in full by the Debtor as they come due pending the Effective Date and thereafter shall be paid by the Reorganized Debtor as they come due until the issuance of the Final Decree. The Confirmation Order may provide that the Reorganized Debtor reserves the right to request the Chapter 11 Case be administratively closed after the Effective Date, pending the Final Decree.

G. DIP Facility Claims

Unless otherwise agreed by the DIP Lender, on the Effective Date the Allowed DIP Facility Claims shall be paid in full in cash with proceeds of the Exit Facility. The DIP Lender shall have no further obligation to pay or otherwise fund any Professional fees or disbursements or Carve-Out Expenses (as such term is defined in the DIP Orders) after the Effective Date. The Reorganized Debtor shall be authorized to take any action necessary or appropriate, with the approval of the DIP Lender and the Exit Facility Lender, to refinance or replace, or amend and restate the DIP Credit Agreement to facilitate the effectiveness of the Exit Facility. The Holder of the DIP Facility Claims shall not be required to File a Proof of Claim or any application seeking recognition of its Claim or any part of its Claim. The DIP Facility Claims are Allowed Claims.

ARTICLE III.

CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. Summary

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including voting, confirmation, and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date.

Class	Claims and Interests	Status	Voting Rights
Class 1	Senior Credit Facility Claims	Impaired	Entitled to Vote
Class 2	Other Secured Claims	Impaired	Entitled to Vote
Class 3	Convenience Claims	Impaired	Entitled to Vote
Class 4	General Unsecured Claims	Impaired	Entitled to Vote
Class 5	Commerce Unsecured Claims	Impaired	Entitled to Vote
Class 6	Argo Secured Claim	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 7	Equity Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

B. CLASSIFIED CLAIMS AND TREATMENT

1. CLASS 1 – Senior Credit Facility Claims

- (a) *Classification:* Class 1 consists of all Senior Credit Facility Claims, which as of the Confirmation Date shall be deemed Allowed.
- (b) *Treatment:* Apollo, as the Holder of the Allowed Class 1 Senior Credit Facility Claims, shall receive, on or as soon as practicable after the Effective Date, (i) payment in Cash of the Paydown/Refinancing Payment, which shall be payable first to all outstanding reasonable professional fees and expenses of legal counsel and financial advisors to Apollo that are part of the Senior Credit Facility Claims, and second to the aggregate of the balance due under the Senior Credit Facility; and (ii) the Series A Units. On and after the Effective Date, upon exercise of the Exit Facility Agent Discretion directing the Litigation Trustee to make payment of net proceeds of Litigation Trust Collateral to Apollo toward the Preferred Amount, Apollo shall receive such Distributions for the account of the Reorganized Debtor toward the Preferred Amount on account of it being the Holder of the Series A Units.
- (c) *Voting:* Class 1 is Impaired under the Plan. Holders of Allowed Claims in Class 1 are entitled to vote to accept or reject the Plan.

2. CLASS 2 – Other Secured Claims

- (a) *Classification:* Class 2 consists of Other Secured Claims.
- (b) *Treatment:* Except to the extent that any entity entitled to payment of any Allowed Other Secured Claim agrees to less favorable treatment, the Holder of an Allowed Other Secured Claim whose Claims are secured by Collateral with value not subsumed by the Collateral value securing the Senior Credit Facility Claims and the DIP Facility Claims, shall be issued new secured notes by the Reorganized Debtor in an amount equal to the net equity value of the underlying Collateral securing such Claim, with payment to be made at an interest rate of six and a half percent (6.5%) per annum, simple interest, with an amortization of ten (10) years and a maturity date of four (4) years after the Effective Date.
- (c) *Voting:* Class 2 is Impaired under the Plan. Holders of Allowed Claims in Class 2 are entitled to vote to accept or reject the Plan. To the extent that the Collateral securing any Other Secured Claim is not of a value sufficient to provide equity value over the amount of the Senior Credit Facility Claims plus the DIP Facility Claims, such Claim(s) shall be classified for voting, allowance and treatment as

General Unsecured Claims.

3. CLASS 3 – Convenience Claims

- (a) *Classification:* Class 3 consists of all Allowed Convenience Claims.
- (b) *Treatment:* The Holder(s) of the Allowed Convenience Claims shall receive payment by the Reorganized Debtor of an amount, in cash, equal to twenty-five percent (25%) of such Allowed Convenience Claims, in full and final satisfaction, settlement, release, and compromise of and in exchange for each Allowed Class 3 Claim. Payment shall be made on the Distribution Date with respect to each Allowed Class 3 Claim. Notwithstanding the foregoing, Holders of Allowed Class 3 Claims who vote (i) to accept the Plan and (ii) to opt into treatment as Class 4 claims shall have their Claims treated as Allowed Class 3 Claims.
- (c) *Voting:* Class 3 is Impaired under the Plan. Holders of Allowed Convenience Claims in Class 3 are entitled to vote to accept or reject the Plan.

4. CLASS 4 – General Unsecured Claims

- (a) *Classification:* Class 4 consists of all General Unsecured Claims.
- (b) *Treatment:* On the Distribution Date each of the Holders of Allowed General Unsecured Claims shall receive a Pro Rata Share of Litigation Trust Interests. The Holders of Allowed Class 4 General Unsecured Claims shall on account of their Litigation Trust Interests be entitled to receive, from the Litigation Trust Distributions the net proceeds of the Litigation Trust Assets that are not Litigation Trust Collateral. All Litigation Trust Distributions shall be payable first upon and on account of the aggregate Litigation Trust Beneficial Interest Principal Amount and after payment in full thereof, toward payment of the Claims Return. Upon payment to the Holders of the Litigation Trust Interests of the aggregate Litigation Trust Beneficial Interest Principal Amount together with the Claims Return, any right, title and interest of the Litigation Trust with respect to the Litigation Trust Assets will automatically terminate and any such remaining Litigation Trust Assets will revert to the Reorganized Debtor and shall be Exit Facility Collateral if the Exit Facility should remain outstanding. The Litigation Trustee shall not make Litigation Trust Distributions from Litigation Trust Loan Collateral without the written consent of Apollo if there is an outstanding balance owned under the Litigation Trust Loan as of such proposed Distribution.

IN THE EVENT OF REJECTION OF THE PLAN BY THE

HOLDERS OF CLASS 4 CLAIMS (I) THE ORRI SHALL NOT BE CONVEYED TO THE LITIGATION TRUSTEE BY MEANS OF THE ORRI CONVEYANCE OR OTHERWISE, (II) THE NPI WILL NOT BE CONVEYED TO THE LITIGATION TRUSTEE BY MEANS OF THE NPI CONVEYANCE OR OTHERWISE, AND (III) SIXTY PERCENT (60%) OF THE REMAINING AVOIDANCE ACTION PROCEEDS SHALL BE EXIT FACILITY COLLATERAL, SUCH THAT ONLY FORTY PERCENT (40%) OF THE REMAINING AVOIDANCE ACTION PROCEEDS (AS OPPOSED TO 45%) SHALL NOT BE EXIT FACILITY COLLATERAL.

- (c) *Voting:* Class 4 is Impaired under the Plan. Holders of Allowed General Unsecured Claims in Class 4 are entitled to vote to accept or reject the Plan.

5. CLASS 5 – Commerce Unsecured Claims

- (a) *Classification:* Class 5 consists of all Commerce Unsecured Claims, which as of the Confirmation Date will be deemed Allowed.
- (b) *Treatment:* The Holder(s) of the Allowed Commerce Unsecured Class 5 Claims shall on the Effective Date receive, in full and final satisfaction, settlement, release, and compromise of and in exchange for each Allowed Class 5 Claim, the Series B Units.
- (c) *Voting:* Class 5 is Impaired under the Plan. Holders of Allowed Commerce Unsecured Claims in Class 5 are entitled to vote to accept or reject the Plan.

6. CLASS 6 – Argo Secured Claim

- (a) *Classification:* Class 6 consists of all the Argo Secured Claim.
- (b) *Treatment:* On the Effective Date, the rights of Argo in respect of the Argo Secured Claim, regardless of the extent to which the Argo Secured Claim is an Allowed Claim because of section 502(e)(1), will be Unimpaired under section 1124(1).
- (c) *Voting:* Class 6 is Unimpaired under the Plan. Holders of the Class 6 Argo Secured Claim are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan.

7. CLASS 7 –Equity Interests

- (a) *Classification:* Class 7 consists of all Equity Interests.
- (b) *Treatment:* On the Effective Date, all Class 7 Equity Interests shall be deemed cancelled, and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and there shall be no distribution on account of such Interests.
- (c) *Voting:* Class 7 is Impaired under the Plan. Holders of Equity Interests in Class 7 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan.

C. Controversies Regarding Impairment.

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**ARTICLE IV.
ACCEPTANCE OR REJECTION OF THE PLAN**

A. Voting Classes

There are five (5) Classes entitled to vote under this Plan. **Holders of Allowed Claims in Classes 1, 2, 3, 4 and 5 are IMPAIRED, and therefore are entitled to vote to accept or reject the Plan.** The Holder of the Class 6 Argo Secured Claim is Unimpaired and deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code and therefore is not entitled to vote to accept or reject the Plan. Holders of Allowed Equity Interests in Class 7 are Impaired but are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan.

B. Voting Rights as to Confirmation of the Plan; Necessity of Allowance of Claims

If a Claim is a Disputed Claim prior to the Confirmation Date, such Disputed Claim shall not be entitled to vote with respect to the Plan unless such Claim is estimated, for voting purposes, by Final Order of the Bankruptcy Court.

C. Acceptance by Impaired Classes

An Impaired Class of Claims shall have accepted the Plan if (a) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan, and (b) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy

Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

ARTICLE V.
PROCEDURES FOR RESOLUTION OF DISPUTED, CONTINGENT AND
UNLIQUIDATED CLAIMS OR EQUITY INTERESTS

A. Prosecution of Objections to Claims

Except as otherwise provided in the Plan, the Debtor, up to the Effective Date and the Reorganized Debtor on and after the Effective Date, shall have the exclusive authority to file objections, settle, compromise, withdraw or litigate to judgment objections to Administrative Claims, Gap Claims, other Non-Tax Priority Claims, Priority Tax Claims, Class 3 Convenience Claims and Other Secured Claims, with the Debtor's rights to be expressly subject to the approval of Apollo. Before the Effective Date the Debtor, and on and after the Effective Date the Litigation Trustee shall have such authority with respect to Class 4 General Unsecured Claims, subject to the approval of Apollo if a settlement or compromise of such objection(s) in any way affects an Avoidance Action. If a Creditor holds both a General Unsecured Claim and any other type of Claim listed hereinabove, then the Debtor, or the Reorganized Debtor on and after the Effective Date, shall, subject to the approval of Apollo, have the exclusive authority with respect to filing objections, settlement, compromise, withdrawal or litigation to judgment objections to such Claims.

Hearings on objections to Claims shall be fixed at least twenty-eight (28) days after the filing of the objections or at such other time as may be fixed by the Bankruptcy Court or agreed to by the parties (subject to the authority of the Bankruptcy Court). From and after the Effective Date, the Reorganized Debtor and the Litigation Trustee, as applicable, may settle or compromise any Disputed Claim without approval of the Bankruptcy Court, but as provided in this Plan, subject to the approval of Apollo, as applicable. Except as to Claims Allowed by the Plan or any Final Order entered by the Bankruptcy Court prior to the Effective Date (including the Confirmation Order), the Debtor, up to the Effective Date, and the Reorganized Debtor and Litigation Trustee, as applicable on and after the Effective Date, shall with respect to their respective authority regarding Claims allowance have and retain any and all rights and defenses the Debtor and/or the Estate has or had as of the Petition Date or thereafter with respect to any Claim or Interest.

B. Disallowance of Claims

Any Claims held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtor by that Entity have been turned over or paid to the Debtor (if prior to the Effective Date) or the Reorganized Debtor or Litigation Trustee, as

applicable, on and after the Effective Date.

Except as provided herein or otherwise agreed, any and all Proofs of Claim submitted after the Claims Bar Date shall be deemed Disallowed and expunged as of the Effective Date without any further notice to or action, order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any Distributions on account of such Claims, unless on or before the Confirmation Hearing such late Claim has been deemed timely filed by a Final Order.

C. Distributions after Allowance

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, Distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. Distributions to which any such Holder is entitled under the Plan as of the Effective Date, less any previous Distribution (if any) that was made on account of the undisputed portion of such Claim shall be made by the Distribution Date, by the Debtor prior to the Effective Date and, on and after the Effective Date, by the Reorganized Debtor or the Litigation Trustee, as applicable.

ARTICLE VI. MEANS OF IMPLEMENTATION OF THE PLAN

A. Plan Funding

Distributions under this Plan, and the Reorganized Debtor's operations post-Effective Date will be funded from the following sources:

1. Exit Facility

On the Effective Date, the Reorganized Debtor shall enter into the Exit Facility, the final form and substance of which shall be acceptable to the Reorganized Debtor and Apollo, including without limitation the amendment and restatement of the Note Purchase Agreement Documents and an amendment, restatement, modification or purchase of the DIP Facility Documents. The Exit Facility shall be Secured by a valid, first priority Security Interest in, to and upon the Note Purchase Agreement Collateral, the DIP Facility Collateral and the Litigation Trust Collateral, except to the extent the Litigation Trust Loan shall have a first priority Lien in, to and upon the Litigation Trust Loan Collateral. Proceeds of the Exit Facility shall be used for (i) payment of the DIP Repayment Amount, (ii) to make the Paydown/Refinancing Payment, (iii) the Working Capital Amount, and (iv) to provide future loan funding availability for the CapEx Amount.

2. Other Plan Funding; the DIP Facility

Other than as set forth in Article VI.A.1 of this Plan, all Cash necessary for the Debtor and Reorganized Debtor to make payments required by this Plan shall be obtained from the Debtor's Cash balances on hand, Cash from business operations, and from the DIP Facility as and if approved by the DIP Lenders, and as necessary and approved by Apollo, from the

Working Capital Amount.

B. Authorization and Issuance of New Equity

On the Effective Date, the Reorganized Debtor shall authorize and issue the New Equity, in accordance with this Plan and the Reorganized Debtor's amended and restated operating agreement. The New Equity in the Reorganized Debtor shall be issued as follows: (i) Apollo or its Affiliates will receive the Series A Units, (ii) Commerce or its Affiliate will receive the Series B Units, and (iii) at the discretion of the board of directors of the Reorganized Debtor and Apollo, new or existing management will receive Series C Units that will be characterized as profit interests for tax purposes and be subject to vesting, forfeiture and recapture provisions as determined by the board of directors of the Reorganized Debtor. Following the Effective Date, distributions from the Reorganized Debtor to its members on account of the New Equity will be made in the following order of priority: (i) Series A Unitholders will receive one hundred percent (100%) of the distributions until the Series A Unitholders have received the Preferred Amount and (ii) after the receipt of the Preferred Amount by the Series A Unitholders, all distributions by the Reorganized Debtor shall be made (1) eighty-seven and 875/1000 percent (87.875%), in the aggregate, to Series A Unitholders, (2) seven and 125/1000 percent (7.125%), in the aggregate, to Series B Unitholders, and (3) five percent (5%) to the holders of Series C Units. To the extent authorized Series C Units are not issued and until Series C Units are issued and outstanding, ninety-two and ½ percent (92.5%) of distributions to be made to such authorized but unissued Series C Units will inure to the benefit of the Series A Unitholders and seven and ½ percent (7.5%) of distributions to be made to such authorized but unissued Series C Units will inure to the benefit of the Series B Unitholders. **For avoidance of doubt, the Reorganized Debtor shall make no distributions to or on account of the Series B Units or Series C Units until after payment in full of the Preferred Amount.**

Issuance of the Series A Units, Series B Units and Series C Units (if any) shall constitute issuance of one hundred percent (100%) of the New Equity in the Reorganized Debtor and shall be deemed issued, or in the case of the Series C Units, authorized to be issued, on the Effective Date. The issuance of the Series A Units, Series B Units and Series C Units will all be subject to the terms of the limited liability company agreement and is authorized without the need for any further corporate action or without any further action by the Debtor or the Reorganized Debtor, as applicable, except as regards the actual issuance of the Series C Units.

Except as otherwise provided in this Plan, on or as soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall issue all securities, notes, instruments, certificates, and other documents required to be issued pursuant to this Plan.

C. Exemptions from Securities Act Registration Requirements

The offering, issuance, and distribution of the New Equity and any Securities pursuant to this Plan and any and all settlement agreements incorporated therein will be exempt from the registration requirements of Section 5 of the Securities Act pursuant to section 1145 of the Bankruptcy Code, section 4(a)(2) of the Securities Act, or any other available exemption from registration under the Securities Act, as applicable. Section 4(a)(2) of the Securities Act exempts transactions not involving a public offering, and section 506 of Regulation D of the Securities

Act provides a safe harbor under section 4(a)(2) for transactions that meet certain requirements. In addition, under section 1145 of the Bankruptcy Code, if applicable, any Securities issued pursuant to this Plan and any and all settlement agreements incorporated therein will be freely transferable under the Securities Act by the recipients thereof, subject to (i) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, and compliance with any applicable state or foreign securities laws, if any, and the rules and regulations of the United States Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments, (ii) the restrictions, if any, on the transferability of such Securities and instruments in the governing documents to such Securities, and (iii) any other applicable regulatory approval. In reliance upon these exemptions, the offer, issuance, and distribution of Securities will not be registered under the Securities Act or any applicable state blue sky laws, and may not be transferred, encumbered or otherwise disposed of in the absence of such registration or an exemption therefrom under the Securities Act or under such laws and regulations thereunder. Accordingly, the Securities may be subject to restrictions on transfer as set forth in the governing documents to such Securities.

D. Restructuring Transactions

The Debtor or the Reorganized Debtor, as applicable, and all parties in interest shall take any actions as may be necessary or appropriate to effectuate the terms of this Plan. The actions taken by the Debtor or the Reorganized Debtor, as applicable, to implement this Plan may include: (i) the execution, delivery, adoption, and/or amendment of appropriate agreements or other documents of restructuring, conversion, disposition, or transfer containing terms that are consistent with the terms of this Plan, the Disclosure Statement, and any Plan Documents and that satisfy the applicable requirements of applicable state law and any other terms to which the applicable parties may agree; (ii) the execution, delivery, adoption, and/or amendment of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of this Plan, the Disclosure Statement, and any ancillary documents and having other terms for which the applicable parties may agree; (iii) the filing of appropriate certificates of formation, merger, consolidation, dissolution, or conversion pursuant to applicable state law, including but not limited to an amended certificate of formation and limited liability agreement with the appropriate governmental authorities; (iv) the cancellation of membership units and warrants; and (v) all other actions that the Debtor or the Reorganized Debtor, as applicable, determine to be necessary, desirable, or appropriate to implement, effectuate, and consummate this Plan or the restructuring transactions contemplated by this Plan, including making filings or recordings that may be required by applicable state law in connection with the restructuring transactions.

Upon the Effective Date, the Governance Documents shall be amended and restated, and all parties receiving new Series A Units and Series B Units (and all persons to whom such parties may sell their equity in the future and all persons who purchase or acquire equity from the Reorganized Debtor in future transactions, including without limitation any Person who receives issued Series C Units) shall be required to become parties to an operating agreement providing for (a) the number of board members; (b) the ability to designate board members; (c) distributions; (d) certain consent rights of Apollo; and (e) other standard provisions to be negotiated in good faith between the Reorganized Debtor, Commerce and Apollo.

E. Corporate Action

As of the Effective Date, the Reorganized Debtor may operate its businesses free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and Confirmation Order. In conformity with applicable bankruptcy and non-bankruptcy law, the Reorganized Debtor shall cause to be filed with all appropriate governmental agencies appropriate restated articles of incorporation, restated by-laws, as the case may be, to the extent necessary under the Bankruptcy Code and as permitted by applicable non-bankruptcy law. Such restated articles of incorporation, restated by-laws, restated articles of organization, and/or restated operating agreements, as the case may be, will include a provision prohibiting the issuance of non-voting equity securities. On the Effective Date, all matters provided for under the Plan that would otherwise require approval of the Debtor, or its respective managers, officers, or directors, including, without limitation, the adoption and effectiveness of the restated articles of incorporation, restated by-laws, restated articles of organization, and/or restated operating agreements, as the case may be, and the election or appointment of officers, directors, and/or managers, as the case may be, of the Reorganized Debtor as provided for under this Plan, shall be deemed to have occurred and shall be in effect from and after the Effective Date without any requirement of further action by the Reorganized Debtor or its respective managers, officers, or directors.

The Reorganized Debtor in its sole discretion, shall be (i) responsible for preparing or causing to be prepared and filing all tax returns required to be filed by the Debtor following the Effective Date and distributing Schedules K-1 to Holders of Equity Interests; (ii) entitled to participate in all tax proceedings with respect to the tax returns of the Debtor following the Effective Date to the extent such proceedings could adversely affect the Reorganized Debtor; and (iii) responsible for and shall bear all costs and expenses incurred in connection with preparing and filing of such tax returns and preparing and mailing of Schedules K-1, and for the conduct of any such tax proceeding.

The board of directors of the Reorganized Debtor shall initially have Five (5) members, acceptable to Apollo, as follows: (i) the Chief Executive Officer of such entity, (ii) three board members appointed by Series A Unitholders and (iii) one Board member appointed by Series B Unitholders, who shall initially be an observer without any board voting rights, provided that the Series B Unitholders shall have membership voting rights and be entitled to change the status of its designee, from an observer to a director and from a director to an observer, from time to time on written notice. Upon the Effective Date or within thirty (30) days thereafter, the Reorganized Debtor shall appoint a new Chief Executive Officer, who shall be selected by the board of directors on or after the Effective Date after consultation with Apollo, the Litigation Trustee, Commerce and management of the Reorganized Debtor.

F. Dissolution of Board of Managers of the Debtor

As of the Effective Date, the existing Board of Managers of the Debtor shall be dissolved without any further action required on the part of the Debtor or the Debtor's officers, directors, managers, shareholders, and members and any remaining officers, directors, managers, or

managing members of any Debtor shall be dismissed without any further action required on the part of any such Debtor, the Equity Holders of the Debtor, the officers, directors, and managers, as applicable, of the Debtor, or the members of the Debtor.

G. Employment, Retirement, and Other Agreements and Employee Compensation Plans.

1. Employment Agreements

Though the Debtor asserts that any and all employment, severance (change in control), retirement, indemnification, or other agreements with their pre-Effective Date managers, officers, and employees (“Employment/Service Agreements”) have either terminated on their own terms or have been terminated by action of the Board of Managers, and Confirmation shall include and constitute such a finding, conclusion and holding, out of an abundance of caution all Employment/Service Agreements shall automatically be deemed rejected, as of the Petition Date in accordance with the provisions of Article VII of this Plan. The Reorganized Debtor may enter into new employment arrangements and/or change in control agreements with the Debtor’s officers who continue to be employed after the Effective Date; provided, however, that to enter into or to obtain the benefits of any such employment agreement, such executive officer must contractually waive and release all pre-existing claims, including those arising from pre-existing employment, change in control, or other employment-related agreements and/or benefits under certain pre-existing compensation and benefit arrangements as against the Debtor, the Reorganized Debtor, Apollo, Commerce, the UCC and those parties who are released parties under Article XI sections C., D, and F of the Plan. On or after the Effective Date, the Reorganized Debtor may adopt, approve, and authorize the new employment arrangement and/or change in control agreement with respect to such officers of the Reorganized Debtor.

2. Other Incentive Plans and Employee Benefits

On and after the Effective Date, the Reorganized Debtor shall have the sole discretion to (i) amend, adopt, assume, and/or honor, in the ordinary course of business or as otherwise provided herein, any contracts, agreements, policies, programs, and plans assumed pursuant to Article VII of this Plan for, among other things, compensation, pursuant to the terms thereof or hereof, including any incentive plan, 401(k) plan, health care benefits, disability benefits, deferred compensation benefits, savings, severance benefits, retirement benefits, welfare benefits, workers’ compensation benefits, life insurance, and accidental death and dismemberment insurance for the managers, officers, and employees of the Debtor who served in such capacity from and after the Petition Date, and (ii) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising prior to the Petition Date.

3. Disclosure as Required by Section 1129(a)(5)

The Plan Proponents will, through either the Plan Supplement or prior to Ballot Deadline provide notice to parties in interest of: (i) the identity and affiliations of any individual proposed to serve as an officer, director of the Reorganized Debtor as of the Effective Date; (ii) the identity of any Insider that will be employed by the Reorganized Debtor and the nature of such

Insider's compensation as of the Effective Date.

H. Effectuating Documents; Further Transactions

On and after the Effective Date, the Reorganized Debtor and its respective directors, members, trustees, officers, and managers as authorized by the Post-Effective Date Corporate Governance documents shall consistent therewith be authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan in the name of and on behalf of the Reorganized Debtor, without the need for any approvals, authorizations, or consents, except for those expressly required pursuant to the Plan, or any further notice to or action, order, or approval of the Bankruptcy Court.

I. Exemption from Certain Taxes and Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall 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. Such exemption specifically applies to: (1) the creation of any mortgage, deed of trust, Lien, or other security interest; (2) the making or assignment of any lease or sublease; (3) any Restructuring Transaction; and/or (4) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan.

J. D&O Tail Insurance Policies

As of the Effective Date, the Reorganized Debtor shall purchase a D&O Insurance Tail Policy providing tail coverage under a directors' and officers' liability insurance policy with a term of two years for their current and former officers, directors, trustees, and members containing the same coverage that exists under the Debtor's current D&O Insurance Policies. After the Effective Date, the Reorganized Debtor shall not terminate or otherwise reduce the coverage under any directors' and officers' insurance policies, including the D&O Insurance Tail Policy in effect on and after the Effective Date, with respect to conduct occurring prior thereto, and all officers, directors, trustees, managers, and members of the Debtor who served in such capacity at any time before the Effective Date shall be entitled to the full benefits of any such D&O Insurance Policies for the full term of such Policies regardless of whether such officers, directors, trustees, or members remain in such positions on or after the Effective Date.

K. Vesting of Assets and Causes of Action

On and after the Effective Date, all of the property and assets of the Debtor and of the Estate under section 541(a) of the Bankruptcy Code shall vest in the Reorganized Debtor, subject to the terms of this Plan requiring transfer of the Litigation Trust Assets to the Litigation Trust.

Unless any of the Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in this Plan or a Bankruptcy Court Final Order, the Litigation Trust shall receive any and all Litigation Trust Assets, including without limitation the Assigned Causes of Action, which shall include but not be limited by those Causes of Action listed on the Retained Causes of Action list attached to the Plan as **Exhibit 2**. The Litigation Trustee, with the consent of Apollo, which shall not be unreasonably withheld, shall determine whether to bring, settle, release, compromise, or enforce such Assigned Causes of Action (or decline to do any of the foregoing), and shall not be required to seek further approval of the Bankruptcy Court for such action. With respect to the Frankel Claims the Litigation Trustee shall not be required to seek such consent from Apollo. In making a determination whether bring, settle, release, compromise, or enforce such Assigned Causes of Action (or decline to do any of the foregoing), the Litigation Trust shall consider the best interests of the Litigation Trust Beneficiaries and the holder of the Exit Facility, and the obligations of the Litigation Trust under the Litigation Trust Loan. **No Entity may rely on the absence of a specific reference in this Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Litigation Trust will not pursue any and all available Causes of Action against it. The Reorganized Debtor and the Litigation Trust expressly reserve all rights to prosecute any and all Causes of Action against any Entity that constitutes Property of the Estate, except as otherwise provided in this Plan. 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 THE PLAN, THE SCHEDULES, OR ANY OTHER DOCUMENT FILED WITH THE BANKRUPTCY COURT SHALL IN NO MANNER WAIVE, ELIMINATE, MODIFY, RELEASE, OR ALTER ANY RIGHT OF THE LITIGATION TRUST TO COMMENCE, PROSECUTE, DEFEND AGAINST, SETTLE, AND REALIZE UPON ANY RIGHTS, CLAIMS, CAUSES OF ACTION, DEFENSES, OR COUNTERCLAIMS THAT THE DEBTOR HAS, OR MAY HAVE, AS OF THE EFFECTIVE DATE.**

Except as otherwise specifically provided in the Plan, all property vested in the Reorganized Debtor shall as of the Effective Date be free and clear of all Liens, Claims and interests of any type or nature, except such as are provided for in this Plan. Specifically, only the following pre-Effective Date Liens, Claims, interests, rights, covenants, agreements, terms and conditions as are provided for herein shall be retained and be binding upon the Reorganized Debtor and/or the Litigation Trust after the Effective Date: (i) the Exit Facility Liens and DIP Facility Liens; (ii) Liens as otherwise as provided for in the Plan, if any; and (iii) Liens as may exist under and in connection with any assumed Executory Contract or Unexpired Lease.

L. Delivery of Distributions and Undeliverable or Unclaimed Distributions.

1. Delivery of Distributions in General

Except as otherwise provided herein, the Debtor, Reorganized Debtor or Litigation Trustee, as applicable, shall make Distributions to Holders of Allowed Claims on the applicable Distribution Date, at the address for each such Holder as indicated on the Debtor's and/or Reorganized Debtor's records as of the date of any such Distribution, or, if the Holder has an Allowed Claim and has submitted a Proof of Claim, to the address on such Proof of Claim. If a

Holder holds more than one Claim in any one Class, all Claims of the Holder will be aggregated into one Claim and one Distribution will be made with respect to the aggregated Claim amount.

2. Minimum; De Minimis Distributions

No Cash payment of less than One Hundred and No/100ths Dollars (\$100) (“Minimum Distribution Amount”), in the reasonable discretion of the Reorganized Debtor or the Litigation Trustee, as applicable, shall be made to a Holder of an Allowed Claim on account of such Allowed Claim, but with respect to Litigation Trust Distributions, such shall be aggregated over time until the distribution to any such Litigation Trust Beneficiary amounts to at least the Minimum Distribution amount.

3. Undeliverable Distributions and Unclaimed Property

In the event that any Distribution to any Holder is returned as undeliverable, no Distribution to such Holder shall be made unless and until the Reorganized Debtor or the Litigation Trustee, as applicable, has determined the then current address of such Holder, at which time such Distribution shall be made to such Holder without interest unless such Distribution shall be of all or part of the Claims Return; *provided*, that such Distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six months from the date the Distribution is made, if not delivered. After such date, all unclaimed property or interests in property shall revert (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) to the Reorganized Debtor or the Litigation Trust, as applicable, automatically and without need for a further order by the Bankruptcy Court and the Claim of any Holder to such property or interest in property, to the extent of such undeliverable Distribution shall be released, settled, compromised, and forever barred.

4. Manner of Payment Pursuant to the Plan

Any payment in Cash to be made pursuant to the Plan shall be made at the election of the Reorganized Debtor or the Litigation Trustee, as applicable, by check or by wire transfer, at the sole and exclusive discretion of the Reorganized Debtor or the Litigation Trustee, as applicable.

5. Compliance with Tax Requirements/Allocations

In connection with the Plan, to the extent applicable, the Reorganized Debtor or the Litigation Trustee, as applicable, shall request Persons entitled to receive Distributions to provide appropriate documentation that may be required for an exemption from withholding or reporting, and shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all Distributions pursuant hereto shall be subject to such withholding and reporting requirements unless an exception applies. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtor or the Litigation Trustee, as applicable, shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the Distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding Distributions pending receipt of information necessary to facilitate such Distributions, or establishing any

other mechanisms it believes is reasonable and appropriate. The Reorganized Debtor and the Litigation Trustee shall with respect to Distributions to be made by each, have reserved the right to allocate Distributions in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances. Distributions by the Reorganized Debtor shall, except as otherwise provided for in this Plan, be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent interest shall be owed on such Claims, for accrued but unpaid interest thereupon.

ARTICLE VII. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection

On the Effective Date, except as otherwise provided herein, all Executory Contracts or Unexpired Leases will be deemed rejected in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than: (1) those that are identified on the Schedule of Assumed Executory Contracts and Unexpired Leases contained in the Plan Supplement; (2) those that have been previously assumed or rejected by a Final Order; (3) those that are the subject of a motion to assume or reject Executory Contracts or Unexpired Leases that is pending on the Confirmation Date; (4) those that are subject to a motion to assume, or reject an Executory Contract or Unexpired Lease pursuant to which the requested effective date of such assumption or rejection is after the Effective Date; or (5) those that are otherwise assumed pursuant to the terms herein.

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the assumptions or rejections of such Executory Contracts or Unexpired Leases as provided under the Plan or the Schedule of Assumed Executory Contracts and Unexpired Leases contained in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated, assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Any motions to assume Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by a Final Order of the Bankruptcy Court on or after the Effective Date. Unless otherwise provided in this Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated pursuant hereunder. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

B. Rejection Claims

Rejection Claims, if any, must be Filed or submitted in accordance with the order of the Bankruptcy Court approving such rejection or within thirty (30) days after the date of entry of

such order, whichever occurs first. Any Rejection Claims not timely submitted within such time shall be automatically Disallowed, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtor, the Estate or property of the foregoing, without the need for any objection by the Debtor or the Reorganized Debtor and without the need for any further notice to, or action, order, or approval of the Bankruptcy Court. Claims arising from the rejection of the Debtor's Executory Contracts or Unexpired Leases shall be classified either as Convenience Claims or as General Unsecured Claims and shall be treated in accordance with Article III of this Plan, as applicable. Notwithstanding anything to the contrary herein, prior to the Effective Date, the Debtor may amend its decision with respect to the rejection of any Executory Contract or Unexpired Lease.

Rejection of any Executory Contract or Unexpired Lease pursuant to this Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtor under such contracts or leases. In particular, notwithstanding any nonbankruptcy law to the contrary, the Reorganized Debtor expressly reserves and does not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the contracting Debtor or the Reorganized Debtor, as applicable, from counterparties to rejected or repudiated Executory Contracts.

C. Cure of Assumed Executory Contracts and Unexpired Leases

Any Cure and/or Cure Claims, including any monetary defaults under an Executory Contract and Unexpired Lease, shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure in Cash on the Effective Date, such other date on which the assumption of such Executory Contract or Unexpired Lease by the Debtor or Reorganized Debtor is approved by Final Order, or, subject to the limitations described below, on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the Cure or (2) any other matter pertaining to assumption, any Cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption.

With respect to each of the Executory Contracts or Unexpired Leases assumed hereunder, the Debtor shall designate through the Cure Notice, which shall be served on all affected counterparties to such Executory Contracts or Unexpired Leases assumed or to be assumed, a proposed Cure, and the assumption of such Executory Contract or Unexpired Lease shall be conditioned upon the disposition of all issues with respect to the Cure. If there is no amount proposed as a Cure Amount within the **the Schedule of Assumed Executory Contracts and Unexpired Leases in the Plan Supplement or within the Cure Notice, the Cure with respect to the Executory Contracts or Unexpired Leases to be assumed the Cure for such Executory Contracts or Unexpired Leases shall be Zero Dollars (\$0), subject to the determination of a different Cure pursuant to the procedures set forth herein and in the Cure Notice.** Except with respect to Executory Contracts and Unexpired Leases for which the Cure is Zero Dollars (\$0), the Cure shall be satisfied by the Reorganized Debtor by payment of the Cure amount in Cash on the later of (i) thirty (30) days following the occurrence of the Effective Date or as soon as reasonably practicable thereafter; or (ii) for any Cures subject to dispute, thirty (30) days after the underlying Cure dispute is resolved, or on such other terms as may be ordered by the

Bankruptcy Court or agreed upon by the parties to the applicable Executory Contract or Unexpired Lease without any further notice to or action, order, or approval of the Bankruptcy Court.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the date that the Debtor assumes such Executory Contract or Unexpired Lease. Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

No later than three (3) days after the Debtor files the Schedule of Assumed Executory Contracts and Unexpired Leases (or any amendments thereof) and the Cure Notice, the Debtor shall serve upon counterparties to such Executory Contracts and Unexpired Leases a Cure Notice that will (i) notify the counterparty of the proposed assumption, (ii) list the applicable Cure, if any, set forth on the Schedule of Assumed Executory Contracts and Unexpired Leases, (iii) describe the procedures for filing objections to the proposed assumption or assumption and assignment of the applicable Executory Contract or Unexpired Lease, (iv) describe the procedures for filing objections to the proposed Cure of default in the applicable Executory Contract or Unexpired Lease, and (v) explain the process by which related disputes will be resolved by the Bankruptcy Court. If no objection is timely received, (a) the non-Debtor party to the Executory Contract or Unexpired Lease to be assumed shall be deemed to have consented to the assumption of the applicable Executory Contract or Unexpired Lease and shall be forever barred from asserting any objection with regard to such assumption, and (b) the proposed Cure shall be controlling, notwithstanding anything to the contrary in any applicable Executory Contract or Unexpired Lease or other document as of the date of the filing of this Plan, and the non-Debtor party to an applicable Executory Contract or Unexpired Lease shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting, collecting, or seeking to collect any additional amounts relating thereto against the Debtor or the Reorganized Debtor, or their property.

Notwithstanding anything to the contrary herein, prior to the Effective Date, the Debtor, with approval of Apollo, may amend its decision with respect to the assumption of any Executory Contract or Unexpired Lease and provide a new notice amending the information provided in the applicable notice. In the case of an Executory Contract or Unexpired Lease designated for assumption that is the subject of a Cure Objection which has not been resolved prior to the Effective Date, the Debtor or the Reorganized Debtor, as applicable, may designate such Executory Contract or Unexpired Lease for rejection at any time prior to the payment of the Cure.

D. Insurance Policies

All of the Debtor's insurance policies and any agreements, documents, or instruments relating thereto, are treated as and deemed to be Executory Contracts under the Plan. On the Effective Date, and notwithstanding anything in this Plan that could be to contrary the Debtor

and Reorganized Debtor shall be deemed to have assumed all insurance policies and any agreements, documents, and instruments related thereto, whether or not such policies, agreements, documents and instruments related thereto are listed on the Schedule of Assumed Executory Contracts and Unexpired Leases.

E. Federal Leases

With respect to the Leasehold Interests, and subject to (i) the reservation by all Entities of all rights regarding whether or not the Leasehold Interests are or are not Executory Contracts or Unexpired Leases and (ii) the occurrence of the Effective Date, the vesting of the Leasehold Interests and maintenance thereof by the Reorganized Debtor under the Plan shall be effective with consent of the United States, which may be granted or denied in accordance with the agency's authority under existing regulations and applicable non-bankruptcy law, if and as necessary. To obtain approval from the United States Department of Interior if and as necessary for the vesting of the Leasehold Interests and maintenance thereof by the Reorganized Debtor, the Reorganized Debtor shall, among other things, comply with all financial assurance requirements in accordance with existing regulations and applicable non-bankruptcy law, with full reservation of all rights. Any reference to the Debtor in bonds maintained in connection with the Leasehold Interests ("Lease Bonds") shall, if and as necessary, be modified to mean the Reorganized Debtor upon Interior's approval of the vesting and Bankruptcy Court approved assumption of the Leasehold Interests to the Reorganized Debtor. The Debtor and Reorganized Debtor shall execute any document(s), at Interior's request, if and as necessary, to amend the Lease Bonds in a manner consistent with this paragraph.

F. Reservation of Rights

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Assumed Executory Contracts and Unexpired Leases, nor anything contained in the Plan or Plan Supplement, shall constitute an admission by the Debtor or Reorganized Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtor or Reorganized has any liability thereunder.

**ARTICLE VIII.
LITIGATION TRUST**

A. General and Issuance of the Litigation Trust Interests

On the Effective Date, the Reorganized Debtor and the proposed Litigation Trustee shall execute the Litigation Trust Agreement and shall take all other necessary steps including the transfer of the Initial Litigation Trust Funds to establish the Litigation Trust and the authority to issue the Litigation Trust Interests. The Litigation Trust Agreement may provide powers, duties, and authorities in addition to those explicitly stated herein, but only to the extent that such powers, duties, and authorities do not affect the status of the Litigation Trust as a liquidating trust for United States federal income tax purposes, or otherwise materially affect the recovery of the Litigation Trust Beneficiaries.

On the Distribution Date the Litigation Trustee shall be deemed to have issued the

Litigation Trust Interests to the Litigation Trust Beneficiaries. Each Litigation Trust Beneficiary shall receive a Litigation Trust Interest equal to its Pro Rata Share of the Litigation Trust Beneficial Interest Principal Amount. Litigation Trust Interests shall not be represented by certificates, but upon issuance of the Litigation Trust Interests the Litigation Trustee shall issue a schedule of the Litigation Trust Beneficiaries and the Pro Rata Share of Litigation Trust Interests issued to each Litigation Trust Beneficiary.

B. Purpose of the Litigation Trust

The Litigation Trust shall be established for the sole purpose of liquidating and distributing the Litigation Trust Assets, in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

C. Fees and Expenses of the Litigation Trust

All fees, expenses, and costs of the Litigation Trust shall be paid by from (i) the Initial Litigation Trust Funds, (ii) Litigation Trust Assets or (iii) loan funds obtained from the Litigation Trust Loan, and the Reorganized Debtor shall not be responsible for any fees, expenses, and costs of the Litigation Trust.

D. Assignment to and Funding of the Litigation Trust; the Litigation Trust Loan

As of the Effective Date, the Reorganized Debtor shall assign and transfer the Litigation Trust Assets to the Litigation Trust free and clear of all Claims and Equity Interests, Liens, charges and encumbrances, except to the extent the Litigation Trust Assets (i) shall be Litigation Trust Collateral, securing payment of the Exit Facility, and (ii) shall be Litigation Trust Loan Collateral Securing payment of the Litigation Trust Loan. The transfer(s) of the Litigation Trust Assets shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax. The Litigation Trustee shall also be authorized, on behalf of the Debtor and its Estate, to pursue all objections, counterclaims and defenses against holders of General Unsecured Claims that are not waived or released pursuant to the Plan, subject to the consent rights of Apollo with respect to objections to General Unsecured Claims if such objections in any way involve Avoidance Actions.

Apollo will provide the Litigation Trust with the Litigation Trust Loan, the use of which shall be authorized by the Litigation Trust Loan Documents, (i) to fund the legal expenses of resolution of the Allowed General Unsecured Claims for determining the Litigation Trust Interests and the Litigation Trust Beneficial Interests Principal Amount, and (ii) to pursue the Assigned Causes of Actions.

The Litigation Trust Loan shall without limitation include the terms providing that: (i) the Litigation Trust shall be liable for repayment of the Litigation Trust Loan, regardless of whether there is sufficient Litigation Trust Loan Collateral with which to pay the Loan, provided, however, the Litigation Trust Beneficiaries shall not be personally liable for amounts owed in connection with the Litigation Trust Loan or otherwise be responsible for the obligations of the Litigation Trust thereunder; (ii) no more than seventy percent (70%) of the amount of any

payment or of the total payments upon the Litigation Trust Loan can be made from or with proceeds of Litigation Trust Collateral (for the avoidance of doubt, if any single payment is One Thousand and No/100ths Dollars (\$1,000), no more than Seven Hundred and No/100ths Dollars (\$700) of such payment can be made from or with proceeds of Litigation Trust Collateral; and if the total payments upon the Litigation Trust Loan to pay it in full amount are Five Hundred Twenty Thousand and No/100ths Dollars (\$520,000), then no more than Three Hundred Sixty-Four Thousand and No/100ths Dollars (\$364,000) can be made from or with proceeds of Litigation Trust Collateral); (iii) no more than seventy percent (70%) of the amount of any payment of counsel fees and costs shall be made from the proceeds of Litigation Trust Collateral, unless the billings from counsel establish that more than seventy percent (70%) of such counsel's work was upon attempted recovery of proceeds from Litigation Trust Collateral; and (iv) any funds borrowed for payment for legal fees and costs related to the Frankel Claims shall be repaid solely from proceeds of Litigation Trust Assets that are not proceeds of or from Litigation Trust Collateral.

E. Governance of the Litigation Trust

The Litigation Trust shall be governed by the Litigation Trust Agreement and administered by the Litigation Trustee. Such Litigation Trust Agreement shall comply with and such Litigation Trustee shall administer the Litigation Trust in accordance with the advance ruling guidelines contained in Revenue Procedure 94-45, 1994-2 C.B. 684.

F. Appointment of the Litigation Trustee

Prior to the Effective Date, the UCC, with the consent of Apollo, which shall not be unreasonably withheld, shall appoint the Litigation Trustee. In the event the Litigation Trustee dies, is terminated, or resigns for any reason, a successor Litigation Trustee shall be appointed in accordance with the terms of the Litigation Trust Agreement.

G. Continuing Court Jurisdiction

The Bankruptcy Court shall have continuing jurisdiction over matters related to the Litigation Trust in accordance with Article X of this Plan and as determined under applicable law.

H. Role of the Litigation Trustee

The Litigation Trustee shall hold the Litigation Trust Assets for the benefit of the Litigation Trust Beneficiaries, subject to the obligations of the Litigation Trustee with respect to the Litigation Trust Collateral and Litigation Trust Loan Collateral, which shall be held for the benefit of the Exit Facility Agent or the holders of the Exit Facility, as applicable and the holders of the Litigation Trust Loan. Subject to the rights of the Holders of the Exit Facility, as applicable and the holders Litigation Trust Loan, and the obligations upon the Litigation Trustee regarding the Litigation Trust Collateral and the Litigation Trust Loan Collateral, the Litigation Trustee, without further order of the Bankruptcy Court, shall have the power and authority to (a) prosecute to judgment or, with approval of Apollo to settle, compromise, and resolve the Assigned Causes of Action (except that consent of Apollo shall not be required as regards the

Litigation Trustee's authority to settle, compromise or resolve the Frankel Claims, notwithstanding the status of the percentage thereof that is Litigation Trust and Litigation Trust Loan Collateral), (b) calculate and make distributions to the Litigation Trust Beneficiaries of the proceeds of Litigation Trust Assets, (c) liquidate, transfer or otherwise dispose of the Litigation Trust Assets or any part thereof or any interest therein upon such terms as the Litigation Trustee determines to be necessary, appropriate or desirable, (d) terminate the Litigation Trust in accordance with the terms of the Plan and the Litigation Trust Agreement, (e) provide the holders of Litigation Trust Beneficial Interests, annually, with unaudited financial statements, and (f) sell, liquidate, dispose of or abandon Litigation Trust Assets, provided however that (i) any such abandonment shall be to the Reorganized Debtor, but only with approval of Reorganized Debtor, and (ii) the Reorganized Debtor shall, within the ORRI Conveyance and the NPI Conveyance be granted a right of first refusal regarding the sale thereof to a third party, and under the Litigation Trust Agreement the Reorganized Debtor shall be granted a right of first refusal with respect to the sale of any other Litigation Trust Assets to a third party. The Litigation Trustee shall be the sole Person entitled to exercise the rights and duties with respect to the Litigation Trust and the Litigation Trust Assets, subject to the consent rights of Apollo. In all circumstances, the Litigation Trustee shall act in the best interests of all Litigation Trust Beneficiaries and in furtherance of the purposes of the Litigation Trust.

I. Nontransferability of Litigation Trust Interests

The beneficial interests in the Litigation Trust shall not be certificated and are not transferable.

J. Retention of Professionals by the Litigation Trustee

The Litigation Trustee without the necessity of Bankruptcy Court approval shall have the right to choose counsel to represent the Litigation Trustee. With respect to the Assigned Causes of Action, appointment of counsel by the Litigation Trustee is subject to the consent of Apollo, which shall not be unreasonably withheld, except that the Litigation Trustee can retain counsel without the consent of Apollo with respect to the Frankel Claims. All counsel retained by the Litigation Trustee to prosecute any Causes of Action where the Litigation Trustee seeks recovery of greater than Thirty-Five Thousand and No/100ths Dollars (\$35,000) will be required to bill at an hourly rate of no greater than Five Hundred and No/100ths Dollars (\$500) and not on a contingency basis. The Litigation Trustee may retain any professional who represented parties in interest in the Chapter 11 Case, including without limitation, Apollo and the UCC, without such prior representation creating a conflict of interest, but any such retention shall otherwise be subject to the applicable rules of professional conduct governing retention of counsel. Neither the Debtor nor the Reorganized Debtor shall be responsible for the fees, costs and expenses of any counsel or other professional retained by the Litigation Trustee.

K. Compensation of the Litigation Trustee

The salient terms of the Litigation Trustee's employment, including the Litigation Trustee's duties and compensation, to the extent not set forth in the Plan, shall be set forth in the Litigation Trust Agreement or the Confirmation Order. The Litigation Trustee shall be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar

types of bankruptcy proceedings.

L. Distributions from the Litigation Trust

All distributions to the Litigation Trust Beneficiaries of Cash and property shall be made in accordance with the terms of the Litigation Trust Agreement by the Litigation Trustee as disbursing agent. The Litigation Trustee shall distribute at periodic intervals as Cash becomes available, in accordance with the Litigation Trust Agreement and this Plan, Cash on hand, except such amounts (i) as are reasonably necessary to meet contingent liabilities, (ii) to pay reasonable expenses (including, but not limited to, any taxes imposed on the Litigation Trust or in respect of the Litigation Trust Assets), (iii) to make required payments under the Litigation Trust Loan, (iv) as may be required to be paid on account of the Exit Facility or, under the Exit Facility Agent Discretion to the Holder of the Series A Units toward the Preferred Amount, and (iv) to satisfy other liabilities incurred by the Litigation Trust in accordance with this Plan or the Litigation Trust Agreement.

M. Limitation of Litigation Trustee's Liability

The Litigation Trustee shall not have any liability to any Litigation Trust Beneficiary or to any Holder of a Claim for the consequences of his or her acts and omissions in the performance of duties under the Plan and Litigation Trust Agreement, except to the extent such consequences are caused by the Litigation Trustee's intentional and willful wrongdoing or gross negligence. The Litigation Trustee shall have no liability to any Litigation Trust Beneficiary or any Holder of a Claim for the consequences of any act or omission that is approved or ratified by the Bankruptcy Court. The Litigation Trustee shall be deemed to have acted in good faith, and shall have no liability to any Litigation Trust Beneficiary or the Holder of a Claim, for acting in reasonable reliance upon the advice or opinion of counsel or other professional person retained by the Litigation Trustee. Under no circumstances shall the Litigation Trustee be liable to any Litigation Trust Beneficiary or Holder of a Claim or any other Person for an amount in excess of the amount that such Person was or would have been entitled to receive from the Litigation Trust.

N. Privileges

The attorney-client privilege, the attorney work product doctrine and any similar privilege against disclosure, and all other similar immunities, including all documents and confidential documents, including but not limited to confidential and/or privileged internal communications of the Board of Managers or officers of the Debtor and any Professionals or committees or committee members of the Debtor that concern or relate in any way to the Chapter 11 Case, any Claims, any actions or matters prior to the filing of or during the Chapter 11 Case, or any matters or Claims or actions dealt with or related to any releases or exculpations set forth in this Plan, or relating to property of the Debtor or the Estate including, but not limited to, all Assigned Causes of Action, the Initial Litigation Trust Funds, shall remain vested on the Effective Date in the Reorganized Debtor, but also, with respect to Litigation Trust Assets and any information or communication relating in any way to Litigation Trust Assets or the General Unsecured Claims shall be vested in the Litigation Trustee as the representative and successor of the Estate and the Debtor with respect to the Litigation Trust Assets. The attorney-client

privilege, the attorney work product doctrine and any similar privilege against disclosure, and all other similar immunities, including all documents and confidential documents, of the UCC shall vest on the Effective Date in the Litigation Trust.

O. Litigation Trust Tax Treatment

The Litigation Trust is intended to be treated for federal income tax purposes as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), for the benefit of the Litigation Trust Beneficiaries. The Litigation Trust shall be a “grantor trust” as defined in Section 671 of the Tax Code with each Litigation Trust Beneficiary treated as a “grantor” of the Litigation Trust. For all U.S. federal income tax purposes, all parties shall treat the transfer of assets by the Debtor or the Reorganized Debtor to the Litigation Trust for the benefit of the Litigation Trust Beneficiaries’ Claims, whether Allowed on or after the Effective Date, as (i) a transfer of the assets of the Debtor directly to the Litigation Trust Beneficiaries, followed by (ii) the transfer by such persons to the Litigation Trust of such assets in exchange for beneficial interests in the Litigation Trust. Accordingly, the Litigation Trust Beneficiaries, whether their Claims are Allowed on or after the Effective Date, shall be treated for federal income tax purposes as the grantors and owners of their respective shares of the applicable assets of the Litigation Trust.

P. Dissolution of the Litigation Trust

The Litigation Trustee and the Litigation Trust shall be discharged or dissolved, as the case may be, at such time as (i) the Litigation Trustee determines, in its sole discretion, that the maintenance of the ORRI and NPI and the pursuit of Assigned Causes of Action are not likely to yield sufficient additional proceeds to justify further maintenance of the Litigation Trust, (ii) all Distributions of Litigation Trust Assets required to be made by the Litigation Trustee under the Plan and Litigation Trust Agreement have been made; provided, however, that in no event shall the Litigation Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion made, determines that a fixed period extension (not to exceed five (5) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Litigation Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on and liquidation of the Litigation Trust Assets. Upon dissolution of the Litigation Trust, any remaining Litigation Trust Assets shall be distributed to the Litigation Trust Beneficiaries as described herein; provided, however, that if at any time all Allowed Claims of the Litigation Trust Beneficiaries have been paid in full, then any remaining Litigation Trust Assets shall be transferred, or assigned, as the case may be, to the Reorganized Debtor.

ARTICLE IX. MODIFICATIONS AND AMENDMENTS

The Plan Proponents reserve the right to alter, amend, or modify this Plan or any exhibits hereto under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date, but only by unanimous agreement among them. After the Confirmation Date and prior to substantial consummation of the Plan, as defined in section 1101(2) of the Bankruptcy Code, the Plan Proponents, but only by unanimous agreement among them, may, under section 1127(b) of

the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, and related documents and agreements, 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 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.

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof and before the Confirmation Date are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

The Plan Proponents reserve the right to revoke or withdraw the Plan before the Confirmation Date or the Effective Date and to file subsequent plans under chapter 11 of the Bankruptcy Code, but only by unanimous agreement among them. If the Plan Proponents revoke or withdraw the Plan, 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 Interest or Class of Claims or Interests), assumption and assignment or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (iii) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtor, the UCC or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor or the UCC or any other Entity; *provided*, that such revocation or withdrawal shall not in any way limit, prejudice or affect the ability of the Debtor to consummate a sale transaction pursuant to section 363 of the Bankruptcy Code after revocation or withdrawal of the Plan, or the rights of the UCC or any Entity to object to any such sale transaction.

ARTICLE X. RETENTION OF JURISDICTION

Under 28 U.S.C. §§ 157(b) and 1334, and sections 105(a) and 1142 of the Bankruptcy Code, 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, and related to, the Chapter 11 Case and this 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, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims;

(b) Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

- (c) Effectuate performance of and payments under the provisions of this Plan;
- (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, including all controversies, suits and disputes that may arise in connection with the interpretation or enforcement of this Plan, and matters concerning state, local and federal taxes according to sections 346, 505 and 1146 of the Bankruptcy Code;
- (e) Enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of this Plan or Confirmation Order and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan or the Confirmation Order, including implementation and making effective the Exit Facility, but not including enforcement of rights under the Exit Facility after the Effective Date;
- (f) Hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan or the Confirmation Order, including disputes arising under Plan Supplement Documents, and any other agreements, documents, or instruments executed in connection with the Plan or the Confirmation Order;
- (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 entity 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 all disputes involving the existence, nature, or scope of the releases provided for in the Plan;
- (k) Hear and determine any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred before or after the Effective Date;
- (k) Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Bankruptcy Cases;
- (l) Recover all assets of the Debtor, wherever located;
- (m) Hear and determine any dispute or matter brought by the Debtor or Reorganized Debtor regarding the scope of any obligation upon on performance by the Debtor or the Reorganized Debtor related to any Assumed Exectory Contract or Unexpired Lease or any asset vested in the Debtor or Reorganized Debtor by and as of Confirmation and the Effective Date;
- (n) Enforce all orders previously entered by the Bankruptcy Court;

(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 a Final Decree closing the Chapter 11 Case; and

(r) Interpret and enforce the terms of any settlement and compromise set forth within the Plan or approved by Final Order of the Bankruptcy Court to ensure compliance with the Confirmation Order which shall be a Final Order of the Bankruptcy Court directing through the approval of compromises contained within the Plan and previously approved by the Bankruptcy Court that the parties to such compromises have resolved that all disputes arising there under are reserved for decision in the Bankruptcy Court.

ARTICLE XI.

DISCHARGE, RELEASE, INJUNCTION, AND RELATED PROVISIONS

A. Discharge of Debtor

THE RIGHTS AFFORDED UNDER THE PLAN AND THE TREATMENT OF ALL CLAIMS AND EQUITY INTERESTS UNDER THE PLAN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION, DISCHARGE, AND RELEASE OF CLAIMS AND EQUITY INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON SUCH CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTOR AND THE REORGANIZED DEBTOR, OR ANY OF THEIR ASSETS OR PROPERTIES. EXCEPT AS OTHERWISE PROVIDED HEREIN, ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR AND THE REORGANIZED DEBTOR SHALL BE SATISFIED, DISCHARGED, AND RELEASED IN FULL, AND ALL PERSONS SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTOR OR THE REORGANIZED DEBTOR, AND/OR ANY PARTY RELEASED UNDER THE PLAN, THEIR SUCCESSORS AND/OR ASSIGNS, THEIR ASSETS, OR THEIR PROPERTIES ANY OTHER OR FURTHER CLAIMS OR EQUITY INTERESTS BASED UPON ANY ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED PRIOR TO THE CONFIRMATION DATE.

B. Injunction

THERE SHALL BE, ON AND AFTER THE EFFECTIVE DATE, AN INJUNCTION TO THE FULLEST EXTENT ALLOWED UNDER SECTIONS 1141 AND 524 OF THE BANKRUPTCY CODE, AND ALL HOLDERS OF CLAIMS SHALL BE ENJOINED FROM PURSUING ANY ACTION ON ACCOUNT OF OR RELATED TO ANY CLAIM THROUGH ANY CONDUCT OR PROCEEDING WHATSOEVER, WITH RESPECT TO DISCHARGED, RELEASED, ENJOINED OR EXCULPATED CLAIMS, AND AS AGAINST ANY PERSON SUBJECT TO OR DERIVING RIGHTS FROM THE DISCHARGE AND/OR ANY RELEASE OR EXCULPATION ARISING UNDER THE PLAN.

C. Releases by the Debtor.

1. Pursuant to section 1123(b) of the Bankruptcy Code and to the fullest extent authorized by applicable law, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after the Effective Date, the Debtor and Reorganized Debtor shall release (i) those officers of the Debtor employed by the Debtor as of the Confirmation Date, (ii) persons who are employed by the Debtor as of the Confirmation Date, (iii) members of the Debtor's Board of Managers as of the Confirmation Date, (iv) Apollo; (v) Commerce; (vi) Freepoint, (vii) TDF, (viii) with respect to each of the foregoing entities in clauses (iv) through (vii), such Entity's predecessors, successors and assigns, current and former Affiliates, subsidiaries, beneficial owners, current or former officers, directors, managers, principals, shareholders, direct and indirect equity holders, general partners, limited partners, members, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals, in each case in their capacity as such, (ix) each of the Debtor's and the Estate's respective advisors, agents, and representatives (including any and all attorneys, accountants, financial advisors, investment bankers restructuring consultants and professionals and other professionals retained by such persons or entities), and (x) the UCC, its members, and its respective financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other Professionals, for any act or omission occurring up to the Confirmation Date, including acts or omissions in connection with, or arising out of, the Disclosure Statement, the Plan, the solicitation of votes for and the pursuit of Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions constituting gross negligence or willful misconduct as determined by a Final Order of the Bankruptcy Court, which shall possess exclusive jurisdiction over all such determinations, and, in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. For the avoidance of doubt and notwithstanding anything to the contrary herein, nothing in this Plan shall constitute or give rise to a release or waiver of the Frankel Claims.

2. The Debtor, the Estate, the Reorganized Debtor and the Litigation Trustee, as of the Effective Date, to the fullest extent afforded by law and agreement, without any further action on the part of any Entity or Person, but reserving to the fullest extent afforded by law and agreement the Frankel Claims shall on and after the Effective Date have released (i) its current and former direct and indirect equity holders, members, partners, subsidiaries, affiliates, funds, managers, managing members, officers, directors, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives, but excluding Scott A. Frankel, and (ii) Apollo, Commerce, Freepoint, TDF and the UCC and all their respective current and former direct and indirect equity holders, members, partners, subsidiaries, affiliates, funds, managers, managing members, officers, directors, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives, of any claim or Cause of Action, but excluding the Frankel Claims, held by the Debtor as of the Petition date or arising thereafter, and/or assertable by any party as a derivative claim of the Debtor or the Estate. FOR THE AVOIDANCE OF DOUBT, THIS RELEASE SHALL NOT APPLY TO OR RELEASE ANY CLAIMS, RIGHTS OR

CAUSES OF ACTION THAT THE DEBTOR MAY HAVE THAT ARE FRANKEL CLAIMS.

D. Releases by Holders of Claims and Interests.

Except as otherwise provided in the Plan, and to the fullest extent authorized by applicable law, on and after the Effective Date, each Consenting Party shall be deemed to have unconditionally released (i) the Debtor, (ii) the Reorganized Debtor (iii) those officers of the Debtor employed as of the Effective Date, (iv) persons who are employed by the Debtor as of the Effective Date, (v) members of the Debtor's Board of Managers as of the Confirmation Date and the Effective Date, (vi) Apollo, (vii) Commerce, (viii) the UCC, (ix) Freepoint, and (x) TDF, and each of their respective advisors, agents, affiliates, and representatives (including any attorneys, accountants, financial advisors, investment bankers and other professionals retained by such persons or entities), from any and all Claims, claims, obligations, rights, suits, damages, Causes of Action, causes of action, remedies and liabilities whatsoever, including any derivative claims, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Consenting Party would have been legally entitled to assert (whether individually, collectively or derivatively) on behalf of the Debtor either before or after commencement of the Bankruptcy Case, based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date in any way relating or pertaining to (a) the Debtor, (b) Claims against or Interests in the Debtor, (c) the circumstances giving rise to the occurrence of the Chapter 11 Case, and (d) the negotiation, formulation and preparation of the Plan, or any related agreements, instruments or other documents.

E. Indemnification Obligations

Subject to the occurrence of the Effective Date, the obligations of the Debtor to indemnify, defend, reimburse or limit the liability of those Persons who were actual serving members, directors, officers or employees of the Debtor as of and after the Order for Relief against any liabilities, claims or causes of action as provided in any of the articles of incorporation or governance documents of the Debtor, or under applicable state or federal law, shall not be discharged, irrespective of whether such indemnification, defense, reimbursement or limitation is owed in connection with an event occurring before or after the Petition Date. The indemnification obligations of the Debtor not subject to discharge are limited to those authorized or permitted under state or federal law as the same is now or may become applicable at the time any claim for indemnification is made.

F. Exculpation

The Debtor, the Reorganized Debtor, Apollo, Commerce, TDF, the UCC, and each of their respective representatives (including any attorneys, and restructuring professionals), shall have no liability to any Holder of any Claim, for any act or omission occurring during the course of this Chapter 11 Case occurring up to the Effective Date, including acts or omissions in connection with, or arising out of, the filing of the petition, the preparation of motions, memoranda, or other documents, preparation and/or

negotiation of the Disclosure Statement and the Plan, the solicitation of votes for and the pursuit of Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for gross negligence or willful misconduct as determined by a Final Order of the Bankruptcy Court, which shall possess exclusive jurisdiction over all such determinations, and, in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

G. Setoffs

Except as otherwise expressly provided for in the Plan, the Debtor, Reorganized Debtor, or the Litigation Trustee, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, may offset against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of such Allowed Claim (before any Distribution is made on account of such Allowed Claim), any claims, rights, and Causes of Action of any nature that the Debtor, Reorganized Debtor, or the Litigation Trustee may hold against the Holder of such Allowed Claim, to the extent such claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or before the Effective Date (whether pursuant to the Plan or otherwise); provided, that neither the failure to exercise such setoff rights nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by the Debtor, Reorganized Debtor, or the Litigation Trustee, of any such claims, rights, and Causes of Action that the Debtor, Reorganized Debtor, or the Litigation Trustee, may possess against such Holder. In no event shall any Holder of Claims be entitled to exercise the right of setoff of any Claim against any claim, right, or Cause of Action of the Debtor, unless such Holder has timely submitted a Proof of Claim in accordance with this Plan or the applicable Bar Date preserving such right of setoff.

H. Recoupment

In no event shall any Holder of Claims or Interests be entitled to recoup any Claim against any claim, right, or Cause of Action of the Debtor, unless such Holder actually has timely submitted a Proof of Claim in accordance with this Plan or the applicable Bar Date preserving such right of recoupment.

I. Subordination Rights

The classification and treatment of all Claims and Interests under the Plan shall conform to and with the respective contractual, legal, and equitable subordination rights of such Claims and Interests, and any such rights shall be settled, compromised, and released pursuant to the Plan.

J. Document Retention

On and after the Effective Date, the Debtor may maintain documents in accordance with their standard document retention policy, as may be altered, amended, modified, or supplemented.

K. Reimbursement or Contribution

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless before the Confirmation Date: (1) such Claim has been adjudicated as non-contingent or (2) the relevant Holder of a Claim has submitted a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered before the Confirmation Date determining such Claim as no longer contingent.

ARTICLE XII. FINDINGS BY THE BANKRUPTCY COURT AND EFFECTS OF CONFIRMATION

In addition to the findings set forth in section 1129(a) of the Bankruptcy Code, and such others as may be separately issued by the Bankruptcy Court, Confirmation of this Plan shall be based upon such findings by the Bankruptcy Court as are reasonably proper in the premises and the Confirmation Order shall contain such orders upon such findings as appropriate. Without limitation, such findings and the effects of the Confirmation Order shall include, in addition to the effects otherwise described in this Plan:

1. That the aggregate value of the Assets of the Estate and of the DIP Collateral together with the Exit Facility Collateral, is no greater than the aggregate amount of the Senior Credit Facility Claims plus the DIP Facility Claims, such that under section 506(a) of the Bankruptcy Code and Rule 3012 of the Bankruptcy Rules, (a) any Claims submitted or Filed as Secured Claims with the Collateral for such claims alleged to be DIP Collateral and/or Exit Facility Collateral shall, if such Claims are Allowed Claims, be Allowed General Unsecured Claims, and (b) No Holder of such a Claim shall be entitled to make an election under section 1111(b) of the Bankruptcy Code to have such Claim treated as a Secured in rem Claim;
2. That Confirmation shall be deemed approval of the Exit Facility (including the transactions contemplated thereby, such as any supplementation or syndication of the Exit Facility, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtor in connection therewith, including the payment of all fees, indemnities, and expenses provided for therein), authorization for the Reorganized Debtor to enter into and execute the Exit Facility and such other documents as Apollo may reasonably require to effectuate the treatment afforded to Apollo pursuant to the Exit Facility, subject to such modifications as the Reorganized Debtor (with the consent of Apollo) may deem to be reasonably necessary to consummate such Exit Facility, and the granting and ratification of the Security Interests and priority thereof Securing the payment of the Exit Facility;
3. That the New Equity, the Exit Facility, any other notes, if any, to be issued under this Plan, the Litigation Trust Agreement and the Litigation Trust Beneficial Interests are exempt from registration under the Securities Act of 1933 and the

Trust Indenture Act of 1939 pursuant to section 1145 of the Bankruptcy Code and that the Exit Facility, any other notes, if any, to be issued under this Plan, the Litigation Trust Agreement and the Litigation Trust Beneficial Interests are not otherwise subject to the Trust Indenture Act of 1939;

4. That the Debtor and Reorganized Debtor are authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, transfers and other agreements or documents created in connection with this Plan, subject to all approvals as may be required by applicable non-bankruptcy law to effectuate the Effective Date;
5. That the Debtor and Apollo and on and after the effective Date the Reorganized Debtor with the approval of the UCC are authorized to create the Litigation Trust;
6. That the classification, distributions, releases, settlements, compromises and other benefits and transactions provided for by and under this Plan and under the authority of section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, are conclusively determined and found to be made in good faith and for equivalent consideration;
7. All Employment/Service Agreements have either terminated by their terms or have been terminated by action of the Board of Managers prior to Confirmation; and
8. That cause exists to abrogate the stay of the effect of the Confirmation Order in accordance with Bankruptcy Rule 3020(e).

ARTICLE XIII.

CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE

A. Conditions Precedent to Confirmation

The following shall constitute conditions precedent to Confirmation of this Plan:

1. The Bankruptcy Court shall have entered an Order in form and substance reasonably acceptable to the Debtor, Commerce, Apollo and the UCC, approving the Disclosure Statement related to this Plan; and
2. The Confirmation Order shall be reasonably acceptable to the Debtor, Commerce, Apollo and the UCC, and otherwise be consistent with the terms and conditions described in this Plan and shall have been Entered by the Bankruptcy Court.

B. Conditions Precedent to the Effective Date

The occurrence of the Effective Date is subject to satisfaction of the following conditions precedent (or conditions contemporaneous or subsequent with respect to actions which are to be taken contemporaneously with or immediately after the occurrence of the Effective Date), any of

which may be waived in writing by the Debtor with, if specified herein, the consent of Commerce, the UCC and/or Apollo, as applicable, which consent shall not be unreasonably withheld:

1. The Bankruptcy Court shall have entered the Confirmation Order and it shall have become a Final Order; provided, that in accordance with Bankruptcy Rules 3020(e), 6004(h), and 6006(d) (and notwithstanding any other provision of the Bankruptcy Code or the Bankruptcy Rules), the Confirmation Order shall not be stayed and shall be effective immediately upon its entry;
2. All documents and agreements necessary to implement the Plan, including all documents related to the Exit Facility, Series A Units, Series B Units, Series C Units (if any) and the Litigation Trust, shall have (a) all conditions precedent to the effectiveness of such documents and agreements satisfied or waived pursuant to the terms of such documents or agreements, (b) been tendered for delivery, and (c) been effected or executed;
3. All governmental and material third party approvals and consents, including Bankruptcy Court approval, necessary in connection with the transactions contemplated by the Plan shall have been obtained, not be subject to unfulfilled conditions and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent, or otherwise impose materially adverse conditions on such transactions;
4. The timing of the Effective Date shall have been agreed to by the Debtor, Apollo Commerce and the UCC;
5. The D&O Insurance Tail Policy shall have been purchased;
6. All reasonable Professional fees and expenses of legal counsel and financial advisors to Apollo and Commerce incurred in connection with this restructuring, including without limitation, those fees and expenses incurred prior to and during the Chapter 11 Case, shall have been paid by the Debtor;
7. The total amount of Allowed Administrative Claims (other than any such Claim held by Apollo or fees due to the Office of the United States Trustee) that remain to be paid is less than Three Million and No/100ths Dollars (\$3,000,000);
8. The total amount of Allowed Priority Non-Tax Claims that remain to be paid is less than Four Million Seven Hundred Fifty Thousand and No/100ths Dollars (\$4,750,000);

9. The Bankruptcy Court shall have made all findings and the Confirmation Order shall have all of the Effects listed in Article XII of this Plan;
10. The pleadings to dismiss with prejudice the UCC Adversary Proceeding, including pleadings to dismiss the proceedings regarding withdrawal of the reference of the UCC Adversary Proceeding (“UCC Adversary Dismissal Pleadings”) shall have been agreed to in form and substance by the Debtor, the UCC, Apollo, Commerce and Whistler, and shall have been executed by all counsel for these parties, with such pleadings to be held by counsel for Apollo pending the occurrence of the Effective Date; and
11. The Interior Reassessment, any supplemental bonding or other financial accommodations or obligations as outlined in the Interior Notice as well as any phase in plan for implementation of any reassessment shall have been resolved to the satisfaction of Apollo.

C. Waiver of Conditions

The conditions to Confirmation and Consummation set forth in this Article XII of the Plan may be waived only by prior written consent of the Debtor, Apollo and the UCC, which consent shall not be unreasonably withheld, without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan.

D. Filing Notice of Effective Date

Within two (2) Business Days after the occurrence of the Effective Date, counsel for the Debtor, Apollo and the UCC shall file a joint notice of occurrence of the Effective Date in the record of the Bankruptcy Court reflecting (i) that the foregoing conditions to the occurrence of the Effective Date have been satisfied or waived by the Debtor, Apollo and the UCC (and any other person who is required by the Plan to approve such waiver), (ii) specifying the date of the Effective Date, and (iii) acknowledging that the Effective Date has occurred on and as of said date.

E. Filing the UCC Adversary Dismissal Pleadings

In addition to the other effects of the occurrence of the Effective Date, within two (2) Business Days after the Notice of the Effective Date is Filed, Counsel for Apollo shall file the UCC Adversary Dismissal Pleadings.

**ARTICLE XIV.
MISCELLANEOUS PROVISIONS**

A. Immediate Binding Effect

Subject to Article XIII of this Plan and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, the Confirmation Order shall be immediately effective and executory and shall not be stayed without an order of the Bankruptcy Court or other Court with

authority to stay the Confirmation Order. Also, upon the occurrence of the Effective Date, the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtor, the Estate, and any and all Holders of Claims or Interests (irrespective of whether the Holders of such Claims or Interests accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunction described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtor.

B. Severability of Plan Provisions

If, prior to Confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court 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 this 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 this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

C. Successors and Assigns

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

D. Notices

Any pleading, notice, request, demand or any other document required or permitted to be made or provided to or upon the Debtor under this Plan, in order to be effective, must be in writing (including by facsimile or electronic mail transmission), and unless otherwise expressly provided herein, shall be deemed to have been duly given or made (i) if personally delivered or if delivered by email or courier service, when actually received by the Entity to whom notice is sent or (ii) if deposited with the United States Postal Service (whether actually received or not), at the close of business on the third business day following the day when placed in the mail, postage prepaid, certified or registered with return receipt requested, addressed to the appropriate Entity or Entities, at the address of such Entity or Entities set forth below (or at such other address as such Entity may designate by written notice to all other Entities listed below in accordance with this Section:

If to the Debtor:	<p>GARDERE WYNNE SEWELL LLP 1000 Louisiana Street, Suite 2000 Houston, TX 77002 Attn: John P. Melko Email: jmelko@gardere.com</p> <p>LOOPER GOODWINE P.C. 650 Poydras Street, Suite 2400 New Orleans, Louisiana 70130 Attn: Paul J. Goodwine Email: pgoodwine@loopergoodwine.com</p>
If to the Reorganized Debtor:	<p>Whistler Energy II, LLC 3200 SW Freeway, Suite 2050 Houston, TX 77027 Attn: Robert E. Wichert Email: rwichert@whistlerenergy.com</p> <p>With a copy to</p> <p>VINSON & ELKINS L.L.P. First City Tower 1001 Fannin Street, Suite 2500 Houston, TX 77002-6760 Attn: Guy Gribov Email: ggribov@velaw.com</p>
If to Apollo:	<p>VINSON & ELKINS L.L.P. First City Tower 1001 Fannin Street, Suite 2500 Houston, TX 77002-6760 Attn: Guy Gribov Email: ggribov@velaw.com</p> <p>KELLY HART & PITRE One American Place 301 Main Street, Suite 1600 Baton Rouge, LA 70801-1916 Attn: Louis M. Phillips Email: louis.phillips@kellyhart.com</p>

If to Commerce:	Sutherland Asbill & Brennan LLP 1001 Fannin Street, Suite 3700 Houston, TX 77002-6760 Attn: Mark Sherrill Email: mark.sherrill@sutherland.com
If to the UCC:	Lugenbuhl, Wheaton, Peck, Rankin & Hubbard 601 Poydras Street, Suite 2775 New Orleans, LA 70130 Attn: Benjamin W. Kadden Email: bkadden@lawla.com
If to the Litigation Trustee:	[To Be Provided in the Litigation Trust Agreement]

E. Dissolution of Statutory Committees

On the Effective Date, any statutory committee appointed in the Chapter 11 Case (including the UCC) shall automatically dissolve and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Case. The Debtor shall no longer be responsible for paying any fees or expenses incurred by the members of or advisors to any statutory committees after the Effective Date.

F. Post-Confirmation Reporting Requirements

After confirmation, the Reorganized Debtor shall continue to report to the United States Trustee on or before the twenty-fifth (25th) day of each calendar month the total of all disbursements for the prior calendar month up to the date an order is entered granting Final Decree.

However, nothing herein shall be construed as a waiver of the right of the Reorganized Debtor to request that, after the Effective Date, the Chapter 11 Case be administratively closed.

G. Reservation of Rights

The Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. Neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtor with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of or against any Person or Entity.

H. Governing Law

Except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, and subject to the provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of New

York, without giving effect to the principles of conflict of laws thereof; provided, that corporate or limited liability company governance matters relating to the Debtor and Reorganized Debtor shall be governed by the laws of the state of incorporation or formation (as applicable) of the Debtor and Reorganized Debtor.

I. Continuing Viability of Other Orders/Agreements

Except to the extent expressly modified or otherwise provided by this Plan, or as otherwise ordered by the Bankruptcy Court (i) all Final Orders previously entered by the Bankruptcy Court and (ii) any agreements between Creditors or between the Debtor and its Creditors will continue in full force and effect.

J. Exhibits

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, or Proofs of Claim that have been submitted, copies of such exhibits and documents shall be available upon written request to the Debtor's counsel at the address above or by downloading such exhibits and documents from the Bankruptcy Court's website at www.laeb.uscourts.gov or the website of the Notice and Claims Agent at <http://www.upshotservices.com/whistlerenergy>.

L. Further Assurances

The Reorganized Debtor and all Holders of Claims or Equity Interests receiving Distributions under this Plan and all other parties in interest shall, from time to time, upon the request or demand of the Litigation Trustee, prepare, execute, and deliver any agreements or documents and take any other action consistent with the terms of this Plan as may be reasonably necessary to effectuate the provisions and intent of this Plan, with each such Entity to bear its own costs incurred in connection therewith.

Dated: October 19, 2016

Respectfully submitted, as of the date first set forth above,

WHISTLER ENERGY II, LLC

By: /s/Robert E. Wichert

Name: Robert E. Wichert

Title: Interim Chief Executive Officer

APOLLO FRANKLIN PARTNERSHIP, L.P.

By: Apollo Franklin Management, LLC, its investment manager

By: /s/Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President and Secretary

APOLLO CENTRE STREET PARTNERSHIP, L.P.

By: Apollo Centre Street Management, LLC, its investment manager

By: /s/Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President and Secretary

APOLLO SPECIAL OPPORTUNITIES MANAGED ACCOUNT, L.P.

By: Apollo SVF Management, L.P., its investment manager

By: Apollo SVF Management GP, LLC, its general partner

By: /s/Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President and Secretary

APOLLO CREDIT OPPORTUNITY FUND III AIV I LP

By: Apollo Credit Opportunity Advisors III LP, its General Partner

By: Apollo Credit Opportunity Advisors III GP LLC, its General Partner

By: /s/Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President and Secretary

ANS HOLDINGS (WE), LTD.

By: Apollo SK Strategic Advisors, LLC, its director

By: /s/Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President and Secretary

COMMERCE OIL LLC

By: /s/Daniel M. Hecht
Name: Daniel M. Hecht
Title: Authorized Signatory

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS
FOR WHISTLER ENERGY II, LLC**

By: /s/Donald E. Burell
Name: Donald E. Burell
Title: Chairman

Prepared and submitted by,

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COUNSEL TO THE DEBTOR

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AND

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1001 Fannin Street, Suite 3700
Houston, Texas 77002

COUNSEL FOR COMMERCE OIL, LLC

EXHIBIT A

WHISTLER ENERGY II, LLC RETAINED CAUSES OF ACTION LIST

1. **Avoidance Actions**: Any and all Causes of Action under sections 502, 510, 541, 542, 543, 544, 545, 547, 548 through 551, and 553 of the Bankruptcy Code, including against those entities identified on the attached Preference Analysis schedule that received payments from the Debtor within ninety (90) days of the Petition Date.
2. **Frank's International**: Any and all Causes of Action the Debtor may assert in connection with the effectuated setoff or avoidable setoff taken by Frank's International prior to or following the Petition Date through conversion of the Debtor's personal property as setoff against amounts owed by the Debtor.
3. **Frankel Claims**: Any and all Causes of Action held by the Debtor against the Debtor's former Chief Executive Officer and member of the Board of Managers, Scott A. Frankel as defined in the Plan.
4. **Insurance Policy Claims**: Any and all Causes of Action against any insurer of the Debtor arising out of such insurer's obligations under the Debtor's insurance policies, including the D&O Insurance Policies.
5. **Roy Carroll Miller Claims**: Any and all Causes of Action related to any third party claims that the Debtor may have against Nabors or any other third party arising out of the wrongful death claim filed by Candice Trudy Miller, individually and on behalf of her deceased husband, Roy Carroll Miller.
6. **Nabors Offshore Corporation**: Any and all Causes of Action against Nabors Offshore Corporation, together with its Affiliates, arising out of and/or related to the platform drilling contract dated February 25, 2014 for the use of Rig MODS 201 (the "**Nabors Rig**"); Nabors' operations on the GC 18 Platform, including the drilling of the Erato Well; and the March 10, 2016 fatality of a Nabors' contractor on the Nabors Rig.
7. **State Law Breach of Contract Claims**: Any and all Causes of Action assertable by the Debtor for breach of contract against any of the Debtor's contract counter-parties.

PREFERENCE ANALYSIS SUMMARY SHEET

Payments During Pref Period	No. of Vendors	Total Amount Paid
> 500K	14	\$17,448,310.52
50 - 500K	35	\$5,288,481.44
20 -50 K	22	\$705,646.09
less than 20 K	22	\$262,664.40
	93	\$23,705,102.45

NOTE: Debtor is reviewing potential defenses that could be claimed under Section 547(c), et seq. of the Bankruptcy Code, but has not finally made its determination as to the viability of such defenses. Debtor does project, however, that certain recipients of avoidable transfers could claim defenses that would reduce the estimated recovery of any preferential payments in a material amount.

Creditor's Name	Date of payment	Preference Payment
NABORS OFFSHORE CORPORATION	1/28/16-3/9/16	\$5,804,018.80
WOOD GROUP PSN INC	1/8/16-3/7/16	\$1,805,880.40
WEATHERFORD US LP	1/13/2016	\$1,254,214.85
BRISTOW US LLC	1/8/16-3/21/16	\$1,080,121.24
BAKER HUGHES	12/31/2015	\$968,017.16
HYDRA OPS LLC	12/31/15-1/28/16	\$841,598.62
OFFICE OF NATURAL RESOURCES REVENUE	1/21/16-3/21/16	\$838,703.41
CACTUS PIPE & SUPPLY LL	1/28/16-2/12/16	\$799,641.63
PREMIERE FLUIDS	1/22/16-2/23/16	\$790,329.30
HALLIBURTON ENERGY SERVICES INC	1/22/16-2/22/16	\$781,146.93
PRIME RATE PREMIUM FINANCE CORP INC	1/22/16-3/21/16	\$695,598.90
C-PORT/STONE LLC	1/8/16-3/22/16	\$681,235.30
TETRA APPLIED TECHNOLOGIES LLC	1/22/16-2/5/16	\$595,603.98
C & G BOATS INC	1/8/16-3/22/16	\$512,200.00
EPIC MANAGEMENT RESOURCES LLC	1/8/16-3/21/16	\$461,997.99
SPECIALIST STAFFING SOLUTIONS	1/8/16-2/23/16	\$457,998.56
SUPERIOR SLICKLINE SERVICES	1/22/16-2/12/16	\$322,175.17
WEATHERFORD ARTIFICIAL LIFT SYSTEMS	1/13/2016	\$274,623.61
M-I LLC	1/14/16-3/22/16	\$273,773.94
UNITED PRODUCTION AND CONTRUCTION	1/22/16-1/28/16	\$250,488.72
QUAIL TOOLS	1/22/16-3/7/16	\$238,093.32
ADRIATIC MARINE LLC	1/13/16-1/28/16	\$233,808.11
KIM SUSAN LLC	1/22/16-3/9/16	\$220,621.36
BENOIT PREMIUM THREADING LLC	1/22/2016	\$220,000.25
SCHLUMBERGER TECHNOLOGY CORPORATION	1/22/16-3/22/16	\$196,797.00
LABORDE MARINE MANAGEMENT LLC	1/13/16-2/12/16	\$167,433.32
FREEPOINT COMMODITIES TRADING & MARKETING LLC	2/4/2016	\$150,000.00
SIERRA ENGINEERING	1/8/16-2/23/16	\$138,348.91
HOS PORT LLC	1/22/16-3/9/16	\$125,973.13
INTEGRATED PRODUCTION SERVICES INC	1/22/16-2/4/16	\$121,574.74
INFINITY VALVE & SUPPLY LLC	1/22/16-2/12/16	\$100,265.00
OFFSHORE ENERGY SERVICES INC	1/22/2016	\$93,148.30
ODYSSEA MARINE INC	2/12/2016	\$91,100.00
FASTORQ LLC	1/22/2016	\$83,761.00
CAMERON INTERNATIONAL CORPORATION	1/22/16-2/29/16	\$82,103.06
HYPERION SAFETY SERVICES	1/22/2016	\$80,142.56
SIGNA ENGINEERING	2/29/2016	\$80,000.00
IPT GLOBAL	12/29/2015	\$79,660.27
J CONNER CONSULTING INC	1/8/16-1/25/16	\$79,422.50
STRIC-LAN COMPANIES	1/22/2016	\$79,228.51
SMITH INTERNATIONAL INC	3/22/2016	\$77,919.30
NATIONAL OILWELL VARCO LP	1/13/16-1/22/16	\$77,026.20
FRANK'S INTERNATIONAL	1/22/2016	\$70,287.31
PKWY 3200 SW FREEWAY LLC	1/4/16-3/1/16	\$66,481.16
CARDNO PPI QUALITY ASSET MGMT	1/22/2016	\$65,726.25
INSTRUMENTATION & ELECTRICAL TECH	1/22/2016	\$65,119.37
ACME TRUCK LINE INC	1/8/16 - 3/9/16	\$60,999.02
ENVIROCHEM 1092	12/28/15-1/22/16	\$52,150.00
MARTIN ENERGY SERVICES	2/12/2016	\$50,233.50
EXPLOITATION TECHNOLOGIES LLC	1/8/16-3/9/16	\$49,351.00
HAMILTON ENGINEERING	1/22/2016	\$46,800.00

Creditor's Name	Date of payment	Preference Payment
UNITED VISION LOGISTICS	1/22/16-2/12/16	\$44,521.87
STABIL DRILL	1/22/2016	\$44,387.05
MCGRUFF SEIBELS & WILLIAMS OF TEXAS INC	1/19/16-3/16/16	\$43,816.00
BDO USA LLP	1/22/16-2/18/16	\$37,784.94
DOLPHIN ENERGY EQUIPMENTENT LLC	1/8/16-1/22/16	\$34,770.68
MICHAEL L GROVE	2/5/16-3/18/16	\$33,784.00
W-INDUSTRIES	1/8/16-1/22/16	\$32,876.50
XCHEM OILFIELD CHEMICALS	1/13/16-1/22/16	\$30,569.86
RIGNET INC	1/22/2016	\$30,109.83
LANDMARK GRAPHICS CORP	1/22/16-2/23/16	\$29,957.87
BCBS	1/22/16-3/9/16	\$29,179.86
EMPIRE SCAFFOLD	1/22/2016	\$28,035.10
LOOPER GOODWINE & BALLEW PC	1/13/16-3/9/16	\$27,957.11
CF & S TANK AND EQUIPMENT CO	1/22/2016	\$27,107.50
SIEMENS INDUSTRY INC	1/22/2016	\$23,851.12
R360 ENVIRONMENTAL SOLUTIONS LLC	1/22/2016	\$23,684.75
PSC INDUSTRIAL OUTSOURCING LP	1/22/16-2/5/16	\$23,054.75
DIAMOND S REFRIGERATION	1/22/2016	\$22,034.20
FRANCIS DRILLING FLUIDS LTD	1/22/2016	\$21,081.00
AMERICAN EAGLE LOGISTICS	1/8/16-2/12/16	\$20,931.10
TOTAL PRODUCTION SUPPLY LLC	1/22/2016-2/12/16	\$19,597.62
MOORES PUMP & SERVICES INC	1/22/2016	\$17,817.81
SUPERIOR PRESSURE CONTROL	1/22/2016	\$17,395.00
P2ES HOLDINGS LLC 2692	1/13/16-2/18/16	\$16,708.73
JD LEACH & ASSOCIATES INC	1/22/16-3/9/16	\$16,705.28
TUBOSCOPE	1/22/2016	\$16,666.02
RYDER SCOTT COMPANY	2/2/2016	\$15,000.00
OFFSHORE RENTAL LTD	1/22/2016	\$14,398.70
OIL STATES SKAGIT SMATCO LLC	1/22/2016	\$14,192.19
LQT INDUSTRIES LLC	1/22/2016	\$10,558.00
SCIENTIFIC DRILLING INTERNATIONAL INC	1/22/16-2/23/16	\$10,300.00
SEATRAN MARINE LLC	1/22/2016	\$10,166.00
SAFETY CONTROLS INC	1/22/2016	\$9,678.00
ROYAL SERVICE AND RENTAL INC	1/22/2016	\$9,675.00
SUPERIOR ENERGY SERVICES INC.	2/12/2016	\$9,395.78
AUTOMATIC POWER INC	1/22/2016	\$9,356.01
AMERICAN EXPRESS	1/13/16-3/9/16	\$9,236.51
JIMENEZ CONTRACT SERVICES LLC	1/22/2016	\$8,171.27
LOUISIANA SAFETY SYSTEMS INC	1/22/2016	\$7,222.50
AIR COMPRESSOR ENERGY SYSTEMS INC	1/22/16-2/26/16	\$7,112.70
CORPORATE PAYMENT SYSTEMS	1/13/16-3/9/16	\$6,834.80
MONSTER RENTALS LLC	1/8/16-1/22/16	\$6,476.48
		\$23,705,102.45

EXHIBIT B

Interior Reassessment as of 10/11/16

Property Type	Property #	Area/Block	Decommissioning Assessment 5/18/16	Bond Number	Obligee	Bond Amount	Decommissioning Assessment 10/11/16	Interior Reassessment Increase Over Bonded Amount
Lease	G04940	GC 18	\$ 38,685,000.00	SUR0020135 SUR0020146	BOEM	\$ 19,325,000.00 \$ 19,360,000.00	\$ 39,326,766.00	\$ 641,766.00
Lease	G05809	EW 988	\$ 7,610,000.00	SUR0020136	BOEM	\$ 7,610,000.00	\$ 16,444,000.00	\$ 8,834,000.00
Lease	G14021	GC 60	\$ 5,000,000.00	SUR0020134	BOEM	\$ 5,000,000.00	\$ 41,118,000.00	\$ 36,118,000.00
ROW	G08526		\$ 1,895,000.00	SUR0034414	BOEM	\$ 1,895,000.00	\$ 1,896,384.00	\$ 1,384.00
ROW	G10090		\$ 1,895,000.00	SUR0034415	BOEM	\$ 1,895,000.00	\$ 1,896,384.00	\$ 1,384.00
ROW	G16036	GC 60	\$ 1,895,000.00	SUR0034416	BOEM	\$ 1,895,000.00	\$ 1,745,184.00	\$ (149,816.00)
ROW	G29066	GC 60	\$ 1,895,000.00	SUR0034417	BOEM	\$ 1,895,000.00	\$ 1,745,184.00	\$ (149,816.00)
ROW	G29067	GC 18	\$ 1,745,000.00	SUR0034418	BOEM	\$ 1,745,000.00	\$ 3,490,369.00	\$ 1,745,369.00
Private	4940 15809 14021	GC 18 EW 944 GC 60		SUR0020128	Exxon	\$ 8,934,814.64		
Private	4940 5809 14021	GC 18 EW 944 GC 60		SUR0020131	W&T	\$ 5,945,184.00		
			\$ 60,620,000.00			\$ 75,499,998.64	\$ 107,662,271.00	\$ 47,042,271.00

Areawide Bonds

Areawide Pipeline	NA	NA		SUR0020133	BOEM	\$ 300,000.00		
General Areawide	NA	NA		SUR0020132	BOEM	\$ 3,000,000.00		

EXHIBIT B

**FILED AND SCHEDULED CLAIMS
(as indicated)**

Type Claim	Filed/Scheduled Amount	Whistler Estimate
Priority/Gap Claims	\$ 3,658,199.42	\$ 1,107,929.22
Other Secured Claims	\$ 14,264,219.83	\$ 12,792,861.00
Convenience Claims	\$ 639,952.22	\$ 480,421.94
General Unsecured Claims	\$ 14,415,935.16	\$ 11,252,117.29
	\$ 32,978,306.63	\$ 25,633,329.45

NOTE: See Attached Schedules for Detailed Descriptions

RECAPITULATION OF CLAIMS ANALYSIS UNDER THE PLAN

Type Claim	Filed/Scheduled Amount	Whistler Estimate
Priority/Gap Claims	\$ 3,658,199.42	\$ 1,107,929.22
Other Secured Claims	\$ -	\$ -
Convenience Claims	\$ 639,952.22	\$ 480,421.94
General Unsecured Claims	\$ 28,680,154.99	\$ 24,044,978.29
	\$ 32,978,306.63	\$ 25,633,329.45

Priority Claims

EXHIBIT B-1

CLAIM NO.	DATE FILED	NAME	DESCRIPTION	TOTAL AMOUNT	PRIORITY	WHISTLER	COMMENT
22	6/30/2016	INVERSIONES ATLANTIS S.A.S	Priority	\$940.88	\$940.88	\$0.00	DISPUTED
40	7/28/2016	ROMFOR SUPPLY COMPANY, D/B/A PREMIERE FLUIDS	Priority	\$184,320.32	\$184,320.32	\$139,634.22	Included as Gap Claim
55	8/29/2016	BRISTOW US, LLC	Priority	\$1,548,993.08	\$401,983.32	\$401,983.32	Included as Gap Claim
64	8/29/2016	EXPLOITATION TECHNOLOGIES, LLC	Unsecured, Priority	\$4,800.00	\$960.00	\$960.00	Included as Gap Claim
71	9/8/2016	HOS PORT LLC	Unsecured, Priority	\$389,600.00	\$99,810.60	\$12,758.28	Included as Gap Claim
88	9/21/2016	SAFETY CONTROLS, INC. (D/B/A SAFCON)	Unsecured, Priority	\$6,498.00	\$4,619.88	\$4,619.88	Included as Gap Claim
90	9/21/2016	J.D. LEACH - ASSOCIATES, INC.	Priority	\$6,658.00	\$6,658.00	\$2,394.00	Included as Gap Claim
100	9/23/2016	STABIL DRILL SPECIALTIES, L.L.C.	Unsecured, Priority	\$351,105.36	\$36,615.20	\$36,592.10	Included as Gap Claim
104	9/26/2016	EMPIRICA LLC	Priority	\$149,699.85	\$6,800.00	\$6,800.00	Included as Gap Claim
		APOLLO FRANKLIN PARTNERSHIP, L.P., APOLLO CENTRE STREET PARTNERSHIP, L.P., APOLLO CREDIT OPPORTUNITY FUND III AIV I LP, ANS HOLDINGS (WE), LTD., AND APOLLO SPECIAL OPPORTUNITIES MANAGED ACCOUNTS, L.P.	Priority, Secured	Unliquidated	\$529,111.11	\$0.00	Included as treatment of Class 1 Claim
110	9/26/2016	ADRIATIC MARINE, LLC	Priority, Secured	\$2,750,358.52	\$41,627.08	\$41,627.08	Included as Gap Claim
119	9/26/2016	NABORS OFFSHORE CORPORATION	Unsecured, Priority, Secured	Unliquidated	\$2,303,831.13	\$99,200.00	Included as Gap Claim
121	9/26/2016	LANDMARK GRAPHICS CORPORATION	Unsecured, Priority	\$71,766.84	\$40,921.90	\$0.00	PAID—critical vendor
				\$3,658,199.42	\$3,658,199.42	\$746,568.88	

EXHIBIT B-2

Claim #	Name	GAP Period Claims
2	DELIGANS VALVES INC	\$ 1,403.49
5	WILKENS WEATHER TECHNOLOGIES, L.P. A ROCKWELL COLLINS COMPANY	\$ 670.76
11	UV LOGISTICS LLC	\$ 970.60
12	COASTAL CHEMICAL CO LLC	\$ 99.00
16	CGG SERVICES (U.S.) INC.	\$ 377.42
21	P2ES HOLDINGS, LLC	\$ 10,345.20
27	FRANCIS DRILLING FLUIDS, LTD.	\$ 77,729.30
31	QUAIL TOOLS, L.P.	\$ 3,091.20
32	CARDNO PPI QUALITY & ASSET MANAGEMENT, LLC	\$ 13,199.13
39	ROMFOR SUPPLY COMPANY, D/B/A PREMIERE FLUIDS	\$ 139,634.22
44	RYDER SCOTT COMPANY, L.P.	\$ 468.77
55	BRISTOW U.S. LLC	\$ 401,983.32
58	RETIF OIL & FUEL, LLC	\$ 186.00
59	OFFSHORE RENTAL, LTD. D/B/A TIGER OFFSHORE RENTALS	\$ 8,258.20
62	ROBIN INSTRUMENT & SPECIALTY, LLC	\$ 287.96
64	EXPLOITATION TECHNOLOGIES, LLC	\$ 960.00
65	STARGEL OFFICE SOLUTIONS, INC.	\$ 566.75
71	HOS PORT LLC	\$ 12,758.28
72	GULF COAST CHEMICAL, LLC	\$ 4,335.90
74	SOLAR TURBINES INCORPORATED	\$ 8,252.16
78	C & G BOATS, INC.	\$ 194,627.50
82	PHAROS MARINE AUTOMATIC POWER, INC.	\$ 285.92
83	FMC TECHNOLOGIES, INC	\$ 1,831.00
87	ELEMENT MATERIALS TECHNOLOGY LAFAYETTE, LLC	\$ 100.00
88	SAFETY CONTROLS, INC. (D/B/A SAFCON)	\$ 4,619.88
90	J.D. LEACH & ASSOCIATES, INC.	\$ 2,394.00
91	ACME TRUCK LINE INC	\$ 2,536.32
100	STABIL DRILL SPECIALTIES, L.L.C.	\$ 36,592.10
102	C-PORT/STONE, LLC	\$ 23,471.05
104	EMPIRICA LLC	\$ 6,800.00
107	MONSTER RENTALS LLC	\$ 6,754.71
115	NABORS OFFSHORE CORPORATION	\$ 99,200.00
120	ADRIATIC MARINE, LLC	\$ 41,627.08
126	NATIONAL OILWELL VARCO L.P.	\$ 1,512.00
		\$ 1,107,929.22

EXHIBIT B-3

CLAIM NO.	DATE FILED	NAME	DESCRIPTION	TOTAL AMOUNT	SECURED	WHISTLER	COMMENT
6	6/15/2016	WEATHERFORD U.S., L.P.	Unsecured, Secured	\$161,189.16	\$156,057.60	\$161,189.16	
7	6/15/2016	HALLIBURTON ENERGY SERVICES, INC.	Secured	\$179,355.63	\$179,355.63	\$179,355.63	
13	6/21/2016	EATON OIL TOOLS, INC.	Secured	\$451,308.03	\$451,308.03	\$451,308.03	
19	6/27/2016	HOLE OPENER CORPORATION	Secured	\$53,553.00	\$53,553.00	\$53,553.00	
25	7/6/2016	STRIC-LAN COMPANIES	Secured	\$335,998.28	\$335,998.28	\$335,998.28	
26	7/6/2016	EAGLE OILFIELD INSPECTION SERVICES, INC.	Secured	AMENDED	\$13,880.50	\$0.00	Included in Convenience Class Claims
27	7/6/2016	FRANCIS DRILLING FLUIDS, LTD.	Secured	\$412,920.00	\$412,920.00	\$335,190.70	
31	7/13/2016	QUAIL TOOLS, L.P.	Secured	Unliquidated	\$228,319.50	\$225,228.30	
34	7/20/2016	HYDRA OPS, LLC	Secured	\$635,786.66	\$635,786.66	\$635,786.66	
39	7/28/2016	ROMFOR SUPPLY COMPANY, D/B/A PREMIERE FLUIDS	Secured	\$214,014.82	\$214,014.82	\$214,014.82	Duplicate claim nos. 40 and 68 are Disputed
42	7/29/2016	ODYSSEA MARINE, INC.	Secured	\$88,012.50	\$88,012.50	\$88,012.50	
47	8/8/2016	IPT GLOBAL, LLC	Secured	\$73,122.39	\$73,122.39	\$73,122.39	Duplicate claim no. 45 is Disputed
49	8/11/2016	ROMERO FISHING - RENTAL TOOLS, LLC	Secured	\$40,340.13	\$40,340.13	\$40,180.00	Claim no. 50 is Withdrawn
55	5/27/2016	BRISTOW U.S. LLC	Secured	\$1,548,993.08	\$1,548,993.08	\$1,132,385.00	Duplicate claim nos. 38, 60 and 61 are Disputed
65	8/29/2016	STARGEL OFFICE SOLUTIONS, INC.	Unsecured, Secured	\$566.75	\$400.53	\$0.00	Included in Gap Period Claims
67	9/1/2016	ARCHROCK SERVICES, LP	Secured	\$107,813.68	\$107,813.68	\$107,813.68	
73	9/8/2016	TETRA TECHNOLOGIES, INC.	Secured	\$906,013.38	\$906,013.38	\$752,348.18	Duplicate claim no. 123 is Disputed
77	9/15/2016	BENTON ENERGY SERVICES CO	Secured	\$288,927.14	\$288,927.14	\$288,927.14	
78	9/15/2016	C - G BOATS, INC.	Secured	\$984,064.80	\$984,064.80	\$793,312.30	Duplicate claim no. 79 is Disputed
81	9/13/2016	ECOSERV, LLC	Secured	AMENDED	\$42,984.97	\$42,984.97	Duplicate claim no. 76 is Disputed
84	9/20/2016	PATTERSON SERVICES, INC. D/B/A PATTERSON RENTAL TOOLS	Unsecured, Secured	\$50,862.57	\$49,435.24	\$48,795.10	Duplicate claim no. 122 is Disputed
95	9/23/2016	CONCENTRIC PIPE - TOOL RENTALS, L.L.C.	Secured	\$379,522.37	\$379,522.37	\$379,522.37	
98	9/23/2016	TESCO OFFSHORE SERVICES INC.	Secured	\$358,188.21	\$358,188.21	\$342,494.30	Duplicate claim no. 46 is Disputed
99	9/23/2016	WARRIOR ENERGY SERVICES CORPORATION	Secured	\$1,334,835.75	\$1,334,835.75	\$856,549.39	
103	9/23/2016	SCIENTIFIC DRILLING INTERNATIONAL, INC.	Secured	\$409,826.69	\$409,826.69	\$409,826.69	
119	9/26/2016	NABORS OFFSHORE CORPORATION	Unsecured, Priority, Secured	Unliquidated	\$2,376,334.67	\$2,375,725.15	Duplicate claim no. 115 is Disputed
120	9/26/2016	ADRIATIC MARINE, LLC	Secured	\$2,418,803.62	\$2,418,803.62	\$2,295,342.60	Duplicate claim no. 116 is Disputed
126	9/30/2016	NATIONAL OILWELL VARCO L.P.	Secured	Unliquidated	\$175,406.66	\$173,894.66	
					\$14,264,219.83	\$12,792,861.00	

EXHIBIT B-4

CLAIM NO.	DATE FILED	NAME	DESCRIPTION	UNSECURED	WHISTLER	COMMENT
2	6/1/2016	DELIGANS VALVES INC	Unsecured	\$7,163.88	\$5,760.39	
5	6/14/2016	WILKENS WEATHER TECHNOLOGIES, L.P. A ROCKWELL COLLINS COMPANY	Unsecured	\$3,103.23	\$3,082.24	
9	6/15/2016	MAGNUM MUD EQUIPMENT CO INC	Unsecured	\$486.00	\$486.00	
10	6/16/2016	AIR COMPRESSOR ENERGY SYSTEMS, INC.	Unsecured	\$2,942.05	\$2,942.05	
11	6/17/2016	UV LOGISTICS LLC	Unsecured	\$22,300.59	\$21,329.99	
12	6/17/2016	COASTAL CHEMICAL CO LLC	Unsecured	\$651.00	\$438.00	
15	6/23/2016	DEEP SOUTH CHEMICAL INC	Unsecured	\$19,230.50	\$19,230.50	
16	6/23/2016	CGG SERVICES (U.S.) INC	Unsecured	\$1,800.00	\$1,422.58	
18	6/24/2016	PINNACLE OILFIELD INSPECTION SERVICES LLC	Unsecured	\$2,993.20	\$2,993.20	
23	7/5/2016	STOUT RISIUS ROSS INC	Unsecured	\$90,860.19	\$15,043.75	Amount Disputed
26	7/6/2016	EAGLE OILFIELD INSPECTION SERVICE INC	Secured	\$13,880.50	\$10,868.60	
33	7/15/2016	LOUISIANA VALVE SOURCE	Unsecured	\$853.80	\$853.80	
41	7/29/2016	DXP ENTERPRISES INC	Unsecured	\$1,394.40	\$1,394.40	
44	8/3/2016	RYDER SCOTT COMPANY, L.P.	Unsecured	\$17,248.02	\$16,779.25	
48	8/11/2016	OFFSHORE TOWING, INC.	Unsecured	\$9,700.00	\$9,700.00	
53	8/15/2016	SIGNA ENGINEERING CORP	Unsecured	\$19,543.56	\$19,543.56	
54	8/17/2016	HOUMA ARMATURE WORKS - SUPPLY, LLC	Unsecured	\$13,705.19	\$13,705.19	
56	8/18/2016	CERTEX USA INC	Unsecured	\$28.46	\$28.46	
57	8/19/2016	IHS GLOBAL INC	Unsecured	\$10,621.06	\$10,621.06	
58	8/26/2016	RETIF OIL - FUEL, LLC	Unsecured	\$4,825.60	\$4,825.60	
62	8/29/2016	ROBIN INSTRUMENT - SPECIALTY, LLC	Unsecured	\$297.96	\$0.00	Gap Claim
63	8/29/2016	BAYOU BOEUF ELECTRIC LLC	Unsecured	\$421.87	\$421.87	
64	8/29/2016	EXPLOITATION TECHNOLOGIES, LLC	Unsecured, Priority	\$3,840.00	\$3,840.00	
65	8/29/2016	STARGEL OFFICE SOLUTIONS, INC.	Unsecured, Secured	\$166.22	\$0.00	Gap Claim
72	9/8/2016	GULF COAST CHEMICAL, LLC	Unsecured	\$8,250.50	\$3,866.10	
74	9/9/2016	SOLAR TURBINES INCORPORATED	Unsecured	\$21,318.00	\$21,318.00	
75	9/12/2016	TURNKEY CLEANING SERVICES GOM, LLC	Unsecured	\$20,533.00	\$20,533.00	
80	9/16/2016	PRIME RATE PREMIUM FINANCE CORPORATION, INC.	Unsecured	\$11,593.32	\$0.00	Disputed
82	9/19/2016	PHAROS MARINE AUTOMATIC POWER, INC.	Unsecured	\$497.24	\$211.32	
83	9/19/2016	FMC TECHNOLOGIES, INC	Unsecured	\$18,060.00	\$9,700.00	
85	9/21/2016	SURVIVAL SYSTEMS INTERNATIONAL, INC	Unsecured	\$12,710.72	\$12,710.72	
87	9/21/2016	ELEMENT MATERIALS TECHNOLOGY LAFAYETTE, LLC	Unsecured	\$1,150.00	\$1,000.00	
88	9/21/2016	SAFETY CONTROLS, INC. (D/B/A SAFCON)	Unsecured, Priority	\$1,878.12	\$1,878.12	
89	9/21/2016	J.D. LEACH - ASSOCIATES, INC.	Unsecured	\$9,342.00	\$9,342.00	
94	9/23/2016	SUPERIOR ENERGY SERVICES, L.L.C.	Unsecured	\$13,352.85	\$13,352.85	
97	9/23/2016	DONOVAN CONTROLS, LLC	Unsecured	\$2,733.10	\$2,733.10	
101	9/23/2016	AMERICAN RECOVERY, LLC	Unsecured	\$8,039.00	\$8,039.00	
107	9/26/2016	MONSTER RENTALS LLC	Unsecured	\$22,174.80	\$22,174.80	
111	9/26/2016	GULFSTREAM SERVICES, INC.	Unsecured	\$20,632.20	\$20,632.20	
114	9/23/2016	IN HOT WATER, LLC	Unsecured	\$1,769.70	\$0.00	Disputed
118	9/26/2016	WIRELINE CONTROL SYSTEMS, LLC	Unsecured, Secured, 503(b)	\$15,881.70	\$0.00	Disputed
125	9/29/2016	WASTE AUDITORS, INC	Unsecured	\$712.50	\$712.50	
SCHED		OFFICE DEPOT CREDIT PLAS	Unsecured	\$34.70	\$0.00	
SCHED		CARDINAL DELIVERY SERVICE	Unsecured	\$42.12	\$42.12	
SCHED		MARTIN ENERGY SERVICES LLC	Unsecured	\$102.00	\$102.00	
SCHED		MICHAEL L GROVE	Unsecured	\$123.00	\$123.00	
SCHED		LOOPER GOODWINE - BALLEW PC	Unsecured	\$159.60	\$159.60	
SCHED		PETROLEUM LABORATORIES INC	Unsecured	\$218.00	\$0.00	PAID
SCHED		CAMERON RENTAL AND TANK	Unsecured	\$320.00	\$320.00	
SCHED		JOHN W STONE OIL DISTRIBUTOR LLC	Unsecured	\$412.50	\$412.50	
SCHED		PELLERIN WATER SOLUTIONS	Unsecured	\$468.54	\$468.54	
SCHED		SUPERIOR PERFORMANCE INC	Unsecured	\$1,231.20	\$1,231.20	
SCHED		LAKE CHARLES FILTRATION LLC	Unsecured	\$1,269.02	\$1,269.02	
SCHED		OILFIELD INSTRUMENTATION	Unsecured	\$1,992.50	\$1,992.50	
SCHED		C - H PIPE SERVICES INC	Unsecured	\$2,273.70	\$2,273.70	
SCHED		SOUTHERN TRANSPORT LLC	Unsecured	\$2,400.00	\$2,400.00	
SCHED		ROCKWELL COLLINS INC	Unsecured	\$3,250.00	\$3,082.24	
SCHED		ROYAL SERVICE AND RENTAL INC	Unsecured	\$3,605.00	\$3,605.00	
SCHED		ISLAND TECHNOLOGY SERVICES INC	Unsecured	\$4,050.00	\$0.00	PAID - Critical Vendor
SCHED		DIAMOND S REFRIGERATION	Unsecured	\$4,210.00	\$4,210.00	
SCHED		FLUID TECHNOLOGY SERVICE INTERNATIONAL	Unsecured	\$4,800.00	\$4,800.00	
SCHED		ANTELOPE OIL TOOL - MFG CO LLC	Unsecured	\$5,531.27	\$5,531.27	
SCHED		TANKS-A-LOT INC	Unsecured	\$7,334.00	\$7,334.00	
SCHED		FISHERMEN'S PETROLEUM COMPANY PLC	Unsecured	\$8,848.94	\$0.00	PAID - Royalty
SCHED		BAYOU INDUSTRIAL SUPPLY LLC	Unsecured	\$9,345.73	\$9,345.73	
SCHED		PETROQIP ENERGY SERVICES LLC	Unsecured	\$9,732.00	\$9,732.00	
SCHED		EVAN RENTALS INC	Unsecured	\$10,000.00	\$10,000.00	
SCHED		QUALITY PREHEAT - PRESSURE WASHERS	Unsecured	\$13,197.00	\$13,197.00	
SCHED		SIEMENS INDUSTRY INC	Unsecured	\$17,610.15	\$17,610.15	
SCHED		W-T OFFSHORE	Unsecured	\$21,049.05	\$0.00	PAID - Royalty
SCHED		GLOBAL X-RAY - TESTING CORPORATION	Unsecured	\$22,033.80	\$22,033.80	
SCHED		DOLPHIN ENERGY EQUIPMENT LLC	Unsecured	\$22,318.13	\$22,318.13	
SCHED		STEEL SERVICE OILFIELD TUBULAR INC	Unsecured	\$23,314.24	\$23,314.24	
				\$639,952.22	\$480,421.94	

EXHIBIT B-5						
CLAIM NO.	DATE FILED	NAME	DESCRIPTION	UNSECURED	WHISTLER	COMMENT
4	6/7/2016	R360 ENVIRONMENTAL SOLUTIONS LLC	Unsecured	\$101,935.00	\$101,935.00	
8	6/17/2016	INSTRUMENTATION AND ELECTRICAL TECHNOLOGIES, LLC	Unsecured	\$47,430.80	\$47,430.80	
20	6/27/2016	AMERICAN EAGLE LOGISTICS, LLC	Unsecured	\$144,264.74	\$127,987.19	
21	6/30/2016	PZES HOLDINGS, LLC	Unsecured	\$36,572.31	\$34,287.00	
23	7/5/2016	STOUT RISIUS ROSS, INC	Unsecured	\$90,860.19	\$0.00	Amount Disputed - incld in Convenience Class
30	7/7/2016	PYRAMID TUBULAR PRODUCTS, LLC	Unsecured	\$757,436.54	\$757,436.54	
32	7/13/2016	CARDNO PPI QUALITY	Unsecured	\$155,076.57	\$146,585.44	
35	7/21/2016	LABORDE MARINE MANAGEMENT, LLC	Unsecured	\$78,250.00	\$78,250.00	
37	7/22/2016	EXTREME ENERGY SERVICES LLC	Unsecured	\$81,082.49	\$81,082.49	Duplicate Claim no. 36 is Disputed
43	8/2/2016	ARGO SURETY	Unsecured	\$3,211,103.54	\$3,211,103.54	Treated as portion of Class 6 Claim
52	8/12/2016	W-INDUSTRIES OF TEXAS LLC	Unsecured	\$107,971.41	\$107,971.41	
59	8/26/2016	OFFSHORE RENTAL, LTD. D/B/A TIGER OFFSHORE RENTALS	Unsecured	\$85,850.55	\$85,850.55	
69	9/6/2016	MOORES PUMP - SERVICES INC	Unsecured	\$33,451.73	\$28,023.97	
71	9/8/2016	HOS PORT LLC	Unsecured, Priority	\$289,789.40	\$278,339.40	
86	9/21/2016	CAMERON INTERNATIONAL CORPORATION	Unsecured	\$180,645.96	\$177,099.42	
91	9/22/2016	ACME TRUCK LINE INC	Unsecured	\$73,066.78	\$73,066.78	Duplicate Claim no. 3 is Disputed
100	9/23/2016	STABIL DRILL SPECIALTIES, L.L.C.	Unsecured, Priority	\$314,490.16	\$314,490.16	
102	9/23/2016	C-PORT/STONE, LLC	Unsecured	\$560,718.44	\$537,247.39	
104	9/26/2016	EMPIRICA LLC	Unsecured	\$149,699.85	\$145,130.00	Duplicate Claim no. 29 is Disputed
117	9/26/2016	SCHLUMBERGER TECHNOLOGY CORPORATION	Unsecured	\$2,506,494.00	\$2,506,494.00	Duplicate Claim no. 113 is Disputed
124	9/28/2016	VAM USA LLC	Unsecured	\$75,134.00	\$75,134.00	
SCHED		UNITED PRODUCTION AND CONTRUCTION	Unsecured	\$281,316.61	\$281,316.61	
SCHED		TOTAL PRODUCTION SUPPLY LLC	Unsecured	\$28,906.33	\$28,906.33	
SCHED		SUPERIOR SLICKLINE SERVICES	Unsecured	\$137,801.66	\$0.00	Treated as part of Warrior Claim No. 99
SCHED		SUPERIOR PRESSURE CONTROL	Unsecured	\$72,368.28	\$0.00	Treated as part of Warrior Claim No. 99
SCHED		STELLAR WELL CONTROL - RISK SERVICES LLC	Unsecured	\$33,475.00	\$33,475.00	
SCHED		SMITH INTERNATIONAL INC	Unsecured	\$120,899.70	\$120,899.70	
SCHED		PREMIERE FLUIDS	Unsecured	\$1,649,117.18	\$0.00	Treated as part of Romfor Claim No. 39
SCHED		PAWS ENERGY SERVICES INC	Unsecured	\$43,162.15	\$43,162.15	
SCHED		M-I LLC	Unsecured	\$911,113.11	\$911,113.11	
SCHED		MCGRIFF SEIBELS - WILLIAMS OF TEXAS INC	Unsecured	\$145,662.86	\$0.00	PAID
SCHED		INFINITY VALVE - SUPPLY LLC	Unsecured	\$50,866.67	\$50,866.67	
SCHED		HYPERION SAFETY SERVICES	Unsecured	\$262,505.12	\$0.00	PAID - Critical Vendor
SCHED		FRANK'S INTERNATIONAL	Unsecured	\$338,460.98	\$338,460.98	Reservation of rights due to apparent Setoff
SCHED		FASTORQ LLC	Unsecured	\$133,802.75	\$0.00	Treated as part of Warrior Claim No. 99
SCHED		ENVIROCHEM 1092	Unsecured	\$307,253.50	\$0.00	Treated as part of F. Drilling Claim No. 27
SCHED		EMPIRE SCAFFOLD	Unsecured	\$112,344.70	\$112,344.70	
SCHED		CACTUS PIPE - SUPPLY LLC	Unsecured	\$247,925.00	\$247,925.00	
SCHED		BESCO TUBULAR	Unsecured	\$288,927.14	\$0.00	Treated as part of BESCO Claim No. 77
SCHED		BDO USA LLP	Unsecured	\$140,252.46	\$140,252.46	
SCHED		ABSOLUTE TESTING SERVICES INC	Unsecured	\$28,449.50	\$28,449.50	
				\$14,415,935.16	\$11,252,117.29	

Extended Weekly Cash Flow

Weeks beginning May 24 through December 27, 2016 (32 weeks)

2nd Revised Forecast (October 4, 2016)

Week Beginning ---->	Weeks 1 - 19	Week 20	Week 21	Week 22	Week 23	Week 24	Week 25	Week 26	Week 27	Week 28	Week 29	Week 30	Week 31	Week 32	Grand Total
	Actual Total	10/4/2016 Budget	10/11/2016 Budget	10/18/2016 Budget	10/25/2016 Budget	11/1/2016 Budget	11/8/2016 Budget	11/15/2016 Budget	11/22/2016 Budget	11/29/2016 Budget	12/6/2016 Budget	12/13/2016 Budget	12/20/2016 Budget	12/27/2016 Budget	
Beginning Cash	324,169	4,993,353	4,198,813	3,736,150	5,818,231	4,934,143	2,928,576	2,687,408	4,498,460	4,477,240	2,440,164	5,744,626	5,242,397	7,777,772	
Cash In															
Revenue	10,570,313	-	-	2,445,305	202,906	-	-	2,223,455	179,572	-	-	-	2,736,166	-	18,357,717
Less: Royalty Payments	(2,368,801)	-	-	-	(558,508)	-	-	-	-	(506,798)	-	-	-	(577,057)	(4,011,164)
Net Realized Revenue	8,201,512	-	-	2,445,305	(355,602)	-	-	2,223,455	179,572	(506,798)	-	-	2,736,166	(577,057)	14,346,553
Total Cash In	8,201,512	-	-	2,445,305	(355,602)	-	-	2,223,455	179,572	(506,798)	-	-	2,736,166	(577,057)	14,346,553
Cash Out															
Gap Period (March 24 - May 25, 2016)	-	-	-	-	-	-	-	-	-	-	-	-	-	3,100,103	3,100,103
Critical Vendor Prepetition	2,928,428	-	-	-	-	-	-	-	-	-	-	-	-	-	2,928,428
Production Operations	4,064,019	641,772	257,154	329,677	190,791	831,261	55,791	377,677	50,791	1,330,681	55,791	329,677	50,791	691,261	9,257,134
Drilling, Workover and Recompletion	1,258,400	9,000	-	-	-	-	-	-	-	-	-	-	-	845,540	2,112,940
General & Administrative	3,209,816	143,769	45,464	2,886	70,968	39,876	45,464	2,886	-	87,597	8,547	145,962	-	76,725	3,879,960
Restructuring	3,024,650	-	160,044	30,662	266,727	1,134,430	139,913	31,840	150,000	112,000	431,200	26,590	150,000	1,572,360	7,230,417
DIP Section 6.21 Emergency Events	247,016	-	-	-	-	-	-	-	-	-	-	-	-	-	247,016
Total Cash Out	14,732,328	794,541	462,662	363,225	528,487	2,005,567	241,168	412,403	200,791	1,530,278	495,538	502,229	200,791	6,285,990	28,755,998
Net Cash Flow	(6,530,816)	(794,541)	(462,662)	2,082,081	(884,088)	(2,005,567)	(241,168)	1,811,052	(21,219)	(2,037,076)	(495,538)	(502,229)	2,535,375	(6,863,047)	(14,409,445)
Projected DIP & Bridge Financing	11,200,000	-	-	-	-	-	-	-	-	-	3,800,000	-	-	-	15,000,000
Ending Cash	4,993,353	4,198,813	3,736,150	5,818,231	4,934,143	2,928,576	2,687,408	4,498,460	4,477,240	2,440,164	5,744,626	5,242,397	7,777,772	914,724	

NOTES:

- 1) Plan confirmation is projected to occur by the end December 2016.
- 2) The Original Forecast assumed that the Gap Period costs would be paid within the initial 13 weeks. Those costs have been reforecast to be paid in December 2016 in conjunction with Plan
- 3) The Original Forecast included \$1 million to refurbish the existing cranes. Approximately \$455,000 has been spent for the installation of a temporary 40-ton crane, and the rental charges to operate the crane through September 2016. Approximately \$104,000 has been included in this 2nd Revised Forecast for the rental charges through mid-December, and the cost to demob the temporary crane. This 2nd Revised Forecast also includes approximately \$840,000 to complete the work to refurbish the old cranes as original planned and to mobilize those cranes in December 2016.
- 4) The Original Forecast assumed the total insurance, surety bond fees and KEIP payments would be paid within the initial 13 weeks. In this 2nd Revised Forecast the surety bond fees are fully paid by the end of the 32-week period. Approximately \$518,000 of insurance premiums will be paid in 2017. In addition, the KEIP payments have been excluded from this 2nd Revised Forecast.
- 5) This 2nd Revised Forecast does not include any expenditures associated with the running of a 363 sales process.
- 6) This 2nd Revised Forecast includes an estimate of restructuring costs in excess of the approved DIP budget. The current approved DIP budget only covers through the end of October, and we believe it is prudent to forecast costs that would be incurred beyond that period, though such costs could only be paid if approved by the court.
- 7) **To maintain operational security a balance of available cash of \$1,500,000 should be maintained at all times; therefore, additional cash or a line of credit may be required in Week 32.**

Whistler Energy II, LLC

Extended 13 Week Cash Flow (Weeks beginning 5/24/2016 - 12/27/2016 - 32 weeks)

Revenue

Description	Production Month			Comments
	Sept	Oct	Nov	
Crude Oil	2,096	2,016	1,936	Bbls / day
Gross Monthly Volume (Bbls)	62,877	54,430	58,077	Based on August Actuals and production decline factor
WTI Price	45.04	47.00	49.82	Sept. & Oct. based on Sept. actual or current prices. Nov. based on futures strip price
Marketing and Transportation Expense	(6.00)	(6.00)	(6.00)	Estimated monthly variable charge which approximates \$6.00/Bbl
Net Price	39.04	41.00	43.82	
Gross Oil Revenue	2,454,737	2,231,619	2,544,955	
Pipeline Quality Adjustment	(9,432)	(8,164)	(8,712)	Pipeline adjustment approximates \$0.15 per barrel
Net Oil Revenue	\$ 2,445,305	\$ 2,223,455	\$ 2,536,244	
Natural Gas				
Gross mmcf	63,617	57,256	63,617	Based on August Actuals
Fuel Usage	(11,273)	(10,146)	(11,273)	Based on August Actuals
Net (mmcf)	52,344	47,110	52,344	
Price	3.03	2.84	2.97	Sept. & Oct. based on Sept. actual or current prices. Nov. based on futures strip price
Net Gas Revenue	\$ 158,602	\$ 133,791	\$ 155,619	
NGLs				
Volume	13,385	13,831	13,385	Based on August Actuals
Price	3.31	3.31	3.31	Based on August Actuals
Net NGL Revenue	\$ 44,304	\$ 45,781	\$ 44,304	
Estimated Royalty Burden				
Total Revenue	\$ 2,648,211	\$ 2,403,027	\$ 2,736,166	
Burden Rate	0.21	0.21	0.21	
Estimated Royalty Due	\$ 558,508	\$ 506,798	\$ 577,057	

Whistler Energy II, LLC
Extended 13 Week Cash Flow (Weeks beginning 5/24/2016 - 12/27/2016 - 32 weeks)
Gap Period

Description	Weeks 1 - 19 Total	12/27/2016 Week 32	32-week Total	Comments
These priority unsecured claims will be paid when the Plan is confirmed; therefore, they have been reflected in Week 32.				
Production Operations	-	634,707	634,707	
Drilling Workover and Recompletion				
Rig Costs 4/18 - 5/24	-	1,764,810	1,764,810	Assumption based on a Nabors rate of \$45,000 per day (April 18 - May 24, 2016 - 37 days). Whistler Energy believes that force majeure could apply to some portion of this amount, and in any event, the Nabors' rig was unavailable from March 21st - April 17th. Also note that the claims by Nabors during the Pre-petition Period and the Gap Period are disputed by the Debtor.
Other drilling costs 3/24 - 5/24/16	-	596,837	596,837	See below
Rig Fuel	-	103,750	103,750	
Total	-	3,100,103	3,100,103	

Other drilling costs

Haliburton	112,500	
SLB	135,000	
MI SWACO	86,454	
NOV	47,214	
HOS Port	12,578	
Quail Tools	3,091	
Misc	200,000	Estimate for remaining vendors
Total	596,837	

Whistler Energy II, LLC

Extended 13 Week Cash Flow (Weeks beginning 5/24/2016 - 12/27/2016 - 32 weeks)

Production Operations

Description	Weeks 1 - 19	10/4/2016	10/11/2016	10/18/2016	10/25/2016	11/1/2016	11/8/2016	11/15/2016	11/22/2016	11/29/2016	12/6/2016	12/13/2016	12/20/2016	12/27/2016	32-week
	Total	Week 20	Week 21	Week 22	Week 23	Week 24	Week 25	Week 26	Week 27	Week 28	Week 29	Week 30	Week 31	Week 32	Total
Chemicals	34,228	14,000				14,000				14,000				14,000	90,228
Communications	50,294	19,000				19,000				19,000				19,000	126,294
Environmental Compliance	700														700
Fuel	-	16,340	16,340	16,340	16,340	16,340	16,340	16,340	16,340	16,340	16,340	16,340	16,340	16,340	212,423
Contract Labor	1,543,342	542,021		209,800		602,021		209,800		602,021		209,800		542,021	4,460,824
Equipment Rental	30,641	4,018		4,018		4,018		4,018		4,018		4,018		4,018	58,766
Parts & Supplies	11,227														11,227
Air Expenses	135,521	16,568		16,568		16,568		16,568		16,568		16,568		16,568	251,500
Boat Expenses	516,951	-	10,127	10,127	10,127	10,127	10,127	10,127	10,127	10,127	10,127	10,127	10,127	10,127	638,471
Sampling & Analysis	1,600														1,600
Lube Oil	7,535	300	300	300	300	300	300	300	300	300	300	300	300	300	11,435
Engineering & Consulting	76,119	8,000				8,000				8,000				8,000	108,119
Regulatory Expense	5,450		1,363			1,363				1,363				1,363	10,900
Inspections	71,174	-		35,500		35,500		35,500		35,500		35,500		35,500	284,174
Trucking and Hauling	30,000		5,000				5,000				5,000				45,000
Repairs and Maintenance	70,327	12,500	212,500	12,500	152,500	92,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	652,827
Preventative Maintenance	557,587	-	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	587,587
Shore base Expenses	75,134	4,607	4,607	4,607	4,607	4,607	4,607	4,607	4,607	4,607	4,607	4,607	4,607	4,607	135,024
Training	9,600			5,000				5,000				5,000			24,600
Materials & Supplies	63,756	4,417	4,417	4,417	4,417	4,417	4,417	4,417	4,417	4,417	4,417	4,417	4,417	4,417	121,183
IT Systems	-			8,000				8,000				8,000			24,000
Crane (temp. crane w/ rental beginning on 7/18)	772,834							48,000		579,420					1,400,254
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	4,064,019	641,772	257,154	329,677	190,791	831,261	55,791	377,677	50,791	1,330,681	55,791	329,677	50,791	691,261	9,257,134

Whistler Energy II, LLC

Extended 13 Week Cash Flow (Weeks beginning 5/24/2016 - 12/27/2016 - 32 weeks)

Drilling, Workover & Recompletion

Description	Weeks 1 - 19 Total	10/4/2016 Week 20	12/27/2016 Week 32	32-week Total	Comments
Clean up, log and temporarily abandon Erato Well	1,258,400	9,000	845,540	2,112,940	1) Ramp-up and check out gear, training, inspection for 4 days, 2) Cement Bond Log, 3) Temporarily abandon and 4) Rigdown to cold stack rig. This does not include any amount for demobilization.
	<u>1,258,400</u>	<u>9,000</u>	<u>845,540</u>	<u>2,112,940</u>	

<u>Invoices from Nabors</u>	<u>Pd. In Wk 10</u>
1027	664,930
1030	676
1031	39,254
	<u>704,860</u>

Extended 13 Week Cash Flow (Weeks beginning 5/24/2016 - 12/27/2016 - 32 weeks)

General & Administrative

Description	Weeks 1 - 19	10/4/2016	10/11/2016	10/18/2016	10/25/2016	11/1/2016	11/8/2016	11/15/2016	11/22/2016	11/29/2016	12/6/2016	12/13/2016	12/20/2016	12/27/2016	32-week
	Total	Week 20	Week 21	Week 22	Week 23	Week 24	Week 25	Week 26	Week 27	Week 28	Week 29	Week 30	Week 31	Week 32	Total
Insurance Premium Estimate	1,297,528	125,451		536				536				536			1,424,586
Collateral Payment for P & A Bonds	442,693														442,693
Surety Bond Fee	739,531											97,913			837,444
Office Supplies	4,516			800				800				800			6,916
Parking	3,728	1,375				872				872					6,847
Postage	(70)														(70)
Bank Charges	3,107		300				300				300				4,007
Copier Expense	1,532														1,532
IT Consulting Fees - B. Martin (EPIC)	1,681				650					650				650	3,631
Office Rent	107,654					22,222			22,222					22,222	174,320
Communications	5,860			1,011				1,011				1,011			8,893
Payroll Fees	1,537	161		154	154			154		154		154		154	2,622
Accounting Fees - P2	24,337	8,500				8,500				8,500				8,500	58,337
Tax Fees & Accounting Advice ⁽¹⁾	-				25,000					10,000					35,000
Travel	9,786														9,786
Meals & Entertainment	3,986	1,000				1,000				1,000					6,986
Delivery and Freight	95	35		35		35		35		35		35		35	340
Salaries	377,650		34,384		34,384		34,384		34,384		34,384		34,384	34,384	583,954
Employment Taxes	133,029		10,780		10,780		10,780		10,780		10,780		10,780	10,780	197,708
Medical Expense	51,489	7,247				7,247					7,247				73,230
Other	148			350				350				350			1,198
TOTAL	3,209,816	143,769	45,464	2,886	70,968	39,876	45,464	2,886	-	87,597	8,547	145,962	-	76,725	3,879,961

(1) Assume tax contract to complete tax work for 2015 plus accounting advisory services

Extended 13 Week Cash Flow (Weeks beginning 5/24/2016 - 12/27/2016 - 32 weeks)

Restructuring

Description	Weeks 1 - 19	10/4/2016	10/11/2016	10/18/2016	10/25/2016	11/1/2016	11/8/2016	11/15/2016	11/22/2016	11/29/2016	12/6/2016	12/13/2016	12/20/2016	12/27/2016	32-week
	Total	Week 20	Week 21	Week 22	Week 23	Week 24	Week 25	Week 26	Week 27	Week 28	Week 29	Week 30	Week 31	Week 32	Total
Gardere	359,589	-	109,941	-	-	-	99,713	-	-	-	65,000	-	-	297,130	931,373
Beck Redden LLP	(15,589)	-	-	-	-	-	-	-	-	-	-	-	-	-	(15,589)
Vinson & Elkins + O'Melveny & Kelly Hart	1,338,856	-	-	-	-	829,530	-	-	-	-	150,000	-	-	300,000	2,618,386
TDF Partners LLC	483,091	-	-	-	137,994	284,900	-	-	150,000	-	-	-	150,000	295,245	1,216,330
Looper Goodwine	50,000	-	-	23,162	-	-	-	20,340	-	-	-	20,340	-	50,998	164,839
Sutherland	-	-	-	-	-	20,000	-	-	-	-	-	-	-	-	20,000
Creditors Committee (Lugenbuhl)	122,609	-	50,103	-	-	-	40,200	-	-	-	40,200	-	-	146,888	400,000
2004 Discovery Motion by UCC	38,402	-	-	-	-	-	-	-	-	-	-	-	-	2,500	40,902
US Trustee Fees	13,975	-	-	-	13,000	-	-	-	-	-	-	-	-	-	26,975
Claims Manager (Upshot)	56,462	-	-	7,500	-	-	-	11,500	-	-	-	-	-	6,000	81,462
Payments of Convenience Claims	-	-	-	-	-	-	-	-	-	-	-	-	-	120,000	120,000
DIP Financing - Fees	224,000	-	-	-	-	-	-	-	-	-	76,000	-	-	-	300,000
DIP Financing - Expenses	19,073	-	-	-	-	-	-	-	-	-	-	-	-	-	19,073
DIP Financing - Interest	322,933	-	-	-	115,733	-	-	-	-	112,000	-	-	-	153,600	704,267
Other	11,250	-	-	-	-	-	-	-	-	-	-	6,250	-	-	17,500
	3,024,650	-	160,044	30,662	266,727	1,134,430	139,913	31,840	150,000	112,000	431,200	26,590	150,000	1,572,360	7,230,417

DIP Financing

12%

Draw # 4

9-Dec

Interest Payment Date

31-Oct

30-Nov

2-Jan

DIP Draws	-	-	-	-	-	-	-	-	-	3,800,000	-	-	-	-
Fees	-	-	-	-	-	-	-	-	-	76,000	-	-	-	-
Expenses	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Draw #1	-	-	-	33,067	-	-	-	-	-	32,000	-	-	-	35,200
Draw #2	-	-	-	51,667	-	-	-	-	-	50,000	-	-	-	55,000
Draw #3	-	-	-	31,000	-	-	-	-	-	30,000	-	-	-	33,000
Draw #4	-	-	-	-	-	-	-	-	-	-	-	-	-	30,400
Total Interest	-	-	-	115,733	-	-	-	-	-	112,000	-	-	-	153,600
Total Fees, Expenses & Interest	-	-	-	115,733	-	-	-	-	-	112,000	76,000	-	-	153,600

EXHIBIT D

**Whistler Energy II, LLC
Proforma Cash Flow**

For the years ended 12/31/17 and 12/31/18

<u>Revenue Summary Data</u>	2017	2018
Volumes (Gross)		
Oil (Bbls)	557,771	672,971
Gas (mmcf)	469,190	578,359
 Pricing		
Oil (\$/Bbls)	\$ 53.34	\$ 54.72
NYMEX Strip	\$ 47.19	\$ 48.57
Net Realized	\$ 3.31	\$ 3.02
Gas (\$/mmcf)		
 Total Revenue	27,872,086	34,432,833
Existing Royalties	(5,878,223)	(7,261,884)
Term ORRI	(243,881)	(301,287)
Net Revenue	<u>21,749,983</u>	<u>26,869,661</u>
 <u>Cash Flow Data</u>	2017	2018
<i>Cash Inflows</i>		
Net Revenue	21,749,983	26,869,661
<i>Cash Outflows</i>		
Capital Costs - Rec Completions	-	3,200,000
Lease Operating Expenses	9,622,566	10,415,017
General & Administrative Expenses	4,568,837	4,459,071
Financing Expenses	4,000,000	4,000,000
 Net Cash Flow	<u>3,558,580</u>	<u>4,795,573</u>

Whistler Energy II, LLC
Proforma Cash Flow
For the years ending 12/31/17 and 12/31/18
Revenue

Description	Year		Comments
	2017	2018	
Crude Oil			
Gross Volume (Bbls)	1,528	1,844	Average Bbls / day
Added volumes for recompletions	557,771	381,944	Based on 10/1/16 Res Engineer's Report
Total Gross Volume (Bbls)	-	291,027	Based on 10/1/16 Res Engineer's Report
	557,771	672,971	
WTI Price	53.34	54.72	Based on ONI strip prices (10/11/16)
Marketing and Transportation Expense	(6.00)	(6.00)	Estimated monthly variable charge which approximates \$6.00/Bbl
Net Price	47.34	48.72	
Gross Oil Revenue	26,404,414	32,784,917	
Pipeline Quality Adjustment	(83,666)	(100,946)	Pipeline adjustment approximates \$0.15 per barrel
Net Oil Revenue	\$ 26,320,749	\$ 32,683,971	
Natural Gas			
Gross Volume (mmcf)	651,690	435,371	Based on 10/1/16 Res Engineer's Report
Added volumes for recompletions	-	325,488	Based on 10/1/16 Res Engineer's Report
Total Gross Volume (mmcf)	651,690	760,859	
Fuel Usage	(182,500)	(182,500)	Assume usage of 500 MCF/Day
Net Volumes (mmcf)	469,190	578,359	
Price	3.31	3.02	Based on ONI strip prices (10/11/16)
Net Gas Revenue	\$ 1,551,338	\$ 1,748,862	
Total Revenue	\$ 27,872,086	\$ 34,432,833	
Estimated Royalty Burden			
ONRR & Existing ORRI			
Burden Rate	0.21	0.21	
Estimated Royalty Due	\$ 5,878,223	\$ 7,261,884	
Term ORRI			
Burden Rate	0.00875	0.00875	
Estimated Royalty Due	\$ 243,881	\$ 301,287	
Net Revenue	\$ 21,749,983	\$ 26,869,661	

Whistler Energy II, LLC
 Proforma Cash Flow
 For the years ending 12/31/17 and 12/31/18
 Capital Costs

Capital Project	Capital Start Date	Amount	Comments	Volume Start Date
A-1 Recompletion (Through Tubing Recompletion)	2/1/2018	1,500,000	Per reserve report	3/1/2018
A-21 DTR 16 Gas Lift Installation	2/15/2018	200,000	80 bbls per day	3/1/2018
A-5 ST 2-LS (Through Tubing Recompletion)	3/1/2018	1,500,000	Per reserve report	4/1/2018
		<u>3,200,000</u>		
Complete Erato With new drilling rig (At a Later date)				
Mob new rig		5,000,000		
Drill remaining (MP-1)		3,832,000		
Drill remaining zone (MP-3)		3,832,000		
Complete MP-3		7,257,000	Per reserve report	4/1/2018
Complete (MP-1)		7,257,000	Per reserve report	4/1/2018
		<u>27,178,000</u>		

**Whistler Energy II, LLC
Proforma Cash Flow
For the years ending 12/31/17 and 12/31/18
Financing Assumptions**

	Principal	Int Rate	Annual Interest	Comments
Exit Facility	50,000,000	8%	4,000,000	Assume the Capital Costs for Recompletions will be paid out of working capital - no add'l borrowings.