

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re</b>	§	<b>Chapter 11</b>
	§	
<b>FAIRWAY ENERGY, LP, et al.,<sup>1</sup></b>	§	<b>Case No. 18-12684 (LSS)</b>
	§	
<b>Debtors.</b>	§	<b>(Jointly Administered)</b>
	§	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (I) APPROVING  
THE DISCLOSURE STATEMENT PURSUANT TO SECTIONS 1125 AND 1126(c)  
OF THE BANKRUPTCY CODE AND (II) CONFIRMING THE CHAPTER 11  
PLAN OF LIQUIDATION OF FAIRWAY ENERGY, LP AND ITS AFFILIATED  
DEBTORS AND DEBTORS IN POSSESSION**

Fairway Energy, LP (“Fairway Energy”) and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in the above captioned chapter 11 cases (the “Chapter 11 Cases”) having proposed and filed (A) the *First Amended Joint Plan of Liquidation of the Debtors and Debtors in Possession Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 392] (as may be amended, modified or supplemented from time to, time, the “Plan”), attached hereto as Exhibit A,<sup>2</sup> and (B) the *Disclosure Statement Under 11 U.S.C. § 1125 in Support of the First Amended Joint Plan of Liquidation of the Debtors and Debtors in Possession Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 406] (as may be amended, modified or supplemented from time to, time, the “Disclosure Statement”), and having filed the *Debtors’ Motion for Entry of an Order (I) Scheduling Combined Hearing on Approval of Disclosure Statement and Confirmation of Plan of Liquidation, (II) Conditionally Approving Disclosure Statement, (III) Establishing Procedures for Solicitation and Tabulation of Votes on Plan, and*

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<sup>1</sup>The Debtors in these chapter 11 cases, along with the last four digits of each Debtors’ federal tax identification number, include: Fairway Energy, LP (4200); Fairway Energy Partners, LLC (7914); and Fairway Energy GP, LLC (7808). The location of the Debtors’ service address is 1000 Louisiana, Suite 1450, Houston, Texas 77002.

<sup>2</sup> Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion or the Plan.

(IV) *Approving Related Matters* [Docket No. 375] (the “Motion”); and the Court, on May 29, 2019, having entered an order (the “Scheduling Order”) (i) scheduling a combined hearing on approval of the Disclosure Statement and the Plan, (ii) conditionally approving the Disclosure Statement, (iii) establishing procedures for solicitation and tabulation of votes on the Plan (the “Voting Procedures”), (iv) approving the procedures for objecting to the adequacy of the Disclosure Statement and confirmation of the Plan, and (v) approving the form and manner of notice of the combined hearing (and together with clause (iv), the “Notice and Objection Procedures”)[Docket No. 397]; and the Court having considered the *Debtors’ Memorandum of Law in Support of Entry of an Order Confirming Joint Chapter 11 Plan of Liquidation of Fairway Energy and its Affiliated Debtors and Debtors in Possession* (the “Confirmation Brief”) [Docket No. 486], the *Declaration of Gary Barton in Support of Confirmation of the Debtors’ Plan* (the “Barton Declaration”) [Docket No. 482], and the *Declaration of Robert M. Flavin in Support of Confirmation of the Debtors’ Plan* (the “Flavin Declaration”) [Docket No. 481], and the *Declaration of Balloting Results by James Daloia of Prime Clerk, LLC* [Docket No. 483] (the “Balloting Agent”), each filed by the Debtors in advance of the Combined Hearing (as defined below); and the Court having held a hearing on July 17, 2019 to consider the adequacy of the Disclosure Statement and confirmation the Plan (the “Combined Hearing”); and upon the arguments of counsel and the evidence proffered and adduced at the Combined Hearing; and the Court having found and determined that the Disclosure Statement should be approved and the Plan should be confirmed as reflected by the Court’s rulings made herein and at the Combined Hearing; and the Court having admitted into the record and considered evidence at the Combined Hearing; and the Court being familiar with the entire record of the Chapter 11 Cases; and after due deliberation thereon and good and sufficient cause appearing therefor, the Court hereby

FINDS, DETERMINES, AND CONCLUDES on the date this Order is entered (the “Confirmation Date”) that:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A. Findings and Conclusions. The findings and conclusions set forth herein and in the record of the Combined Hearing constitute the Court’s findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Jurisdiction: Venue: Core Proceeding (28 U.S.C. §§ 157(6)(2) and 1334(a)). This Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Approval of the Disclosure Statement, the Notice and Objection Procedures, the Voting Procedures and confirmation of the Plan are core proceedings pursuant to 28 U.S.C. § 157(b)(2) and 28 U.S.C. § 1334. This Court has jurisdiction to enter a final order with respect thereto. This Court has jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

C. Chapter 11 Petitions. On November 26, 2018 (the “Petition Date”), each Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in this Court. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases pursuant to section 1104 of

the Bankruptcy Code. No committee of unsecured creditors or other statutory committee has been appointed under section 1102 of the Bankruptcy Code. Further, in accordance with an order of this Court, the Chapter 11 cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

D. Solicitation. In accordance with the Voting Procedures and the Scheduling Order, the Debtors have properly solicited votes on the acceptance or rejection of the Plan for the impaired classes entitled to vote on the Plan.

E. Notice. The Debtors have caused the Balloting Agent to distribute the Disclosure Statement, the Plan, the Combined Hearing Notice, the Solicitation Packages, the Ballots, the Opt Out Election Forms, and related documents to Holders of Claims and Interests in Classes 1 to 5 in accordance with the Scheduling Order. *See Affidavit/Declaration of Mailing of Prime Clerk* [Docket Nos. 428 and 445] (the "Mailing Affidavit"). The contents of the Solicitation Packages comply with the requirements of Bankruptcy Rules 2002 and 3017 and have been approved. The Debtors have also caused Prime Clerk to distribute the Disclosure Statement, the Plan, and the Solicitation Packages to the parties included on the Debtors' consolidated list of twenty (20) largest unsecured creditors, the U.S. Trustee, and all parties filing a notice of appearance and request for service pursuant to Bankruptcy Rule 2002 in these Chapter 11 Cases as of the date of the Scheduling Order. *See Mailing Affidavit*. The Plan and Disclosure Statement were also distributed by the Debtors to counterparties on the Debtors' leases and executory contracts. The Plan and Disclosure Statement were distributed by the Debtors to holders of Claims and Interests solely for the purposes of providing postpetition disclosure pursuant to section 1125 of the Bankruptcy Code so that holders of Claims and Interests could determine whether to object to Confirmation of the Plan and, in the case of holders of Interests in

Class 5, whether to opt out of the release provisions contained in Article 10.2.3 of the Plan (such releases, the “Third Party Releases”). To the extent in limited instances mail was returned as undeliverable, the Debtors instituted procedures to attempt to locate alternative addresses, which for all Interest Holders in Class 5 were successfully transmitted. Such transmittal and service were adequate and sufficient under the circumstances and no other or further notice is or shall be required.

F. Mailing and Publication of Combined Hearing Notices. On or around June 3, 2019, the Debtors caused: (i) the Combined Hearing Notice to be mailed to (a) holders of Claims or Interests, (b) all parties filing a notice of appearance and request for service pursuant to Bankruptcy Rule 2002 in these Chapter 11 Cases, (c) state and local taxing authorities for states and localities in which the Debtors did business, (d) the Internal Revenue Service, (e) the Securities and Exchange Commission, (f) the United States Attorney for the District of Delaware, (g) all counterparties to executory contracts and leases, (h) the U.S. Trustee, (i) all federal and state authorities that regulate any aspect of the Debtors’ business, and (j) all persons or entities listed on the Debtors’ creditor mailing matrix; (ii) the Solicitation Packages to the Holders of Claims in Classes 2 and 4, and (iii) the Notices of Non-Voting Status and Non-Debtor Release Consent Election, attached to the Motion as Exhibit 3, to be mailed to all Holders of Claims and Interests. *See* Mailing Affidavit. The forms of the Combined Hearing Notice, Ballots, Release Opt Out Form, and other documents in the Solicitation Packages comply with Bankruptcy Rules 2002 and 3017 and were previously approved. Additionally, the Debtors also published a notice (the “Publication Notice”) substantially similar to the Combined Hearing Notice in the *New York Times* on June 12, 2019. *See Certificate of Publication of Combined Hearing Notice (The New York Times)* [Docket No. 441]. Publication of the Publication Notice

was in substantial compliance with Bankruptcy Rule 2002(1) and the Scheduling Order. The Debtors have given proper, adequate and sufficient notice of the hearing to approve the Plan as required by Bankruptcy Rules 3017(a) and 3018. The Debtors have given proper, adequate and sufficient notice of the Combined Hearing as required by Bankruptcy Rule 3017(d). Due, adequate, and sufficient notice of the Disclosure Statement and the Plan, along with deadlines for filing objections to the Plan and the Disclosure Statement, has been given to all known holders of Claims and Interests. No other or further notice is or shall be required.

G. Objections. All parties have had a full and fair opportunity to litigate all issues raised by objections to confirmation of the Plan. No objections were filed.

H. Adequacy of Disclosure Statement. The information contained in the Disclosure Statement as provisionally approved under the Scheduling Order is determined to have contained adequate information as that term is defined in section 1125(a) of the Bankruptcy Code and complies with any additional requirements of the Bankruptcy Code and the Bankruptcy Rules, as well as with applicable non-bankruptcy law, regarding the Debtors so that parties entitled to vote could make an informed decision as to whether to object or reject the Plan, or if applicable, provide the Third Party Release. The Disclosure Statement complies with the requirements of Bankruptcy Rule 3016(c) by sufficiently describing in specific and conspicuous bold language the provisions of the Plan that provide for releases and injunctions against conduct not otherwise enjoined under the Bankruptcy Code and sufficiently identifies the persons and entities that are subject to the releases and injunctions.

I. Voting. All procedures used to tabulate the Ballots were fair and conducted in accordance with the Scheduling Order, the Bankruptcy Code, the Bankruptcy Rules, the Local

Rules, and all other applicable rules, laws, and regulations. As evidenced by the Flavin Declaration, Class 2 and Class 4 each voted to accept the Plan.

J. Effectiveness of the Sale. On April 11, 2019, the Court entered the *Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Authorizing and Approving the Debtors' Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith, and (C) Granting Related Relief* [Docket No. 330] (the "Sale Order"), pursuant to which the Court approved the sale (the "Sale") of substantially all of the Debtors' assets to Fairway New Co LLC (the "Purchaser"), an entity formed by the Prepetition Lenders and the DIP Lender for the sole purpose of acquiring the Purchased Assets. The Sale Order has become a Final Order, and the Sale closed on May 31, 2019.

K. Bankruptcy Rule 3016. The Plan is dated and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement on the docket of the Chapter 11 Cases simultaneously with the Plan satisfied Bankruptcy Rule 3016(b).

L. Burden of Proof. As more fully set forth herein, the Debtors, as proponents of the Plan, have met their burden of proving each of the elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for confirmation of the Plan. The evidentiary record of the Combined Hearing supports the findings of facts and conclusions of law set forth in the following paragraphs.

M. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan satisfies section 1129(a)(1) of the Bankruptcy Code because it complies with the applicable provisions of the Bankruptcy Code. In particular, the Plan complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code as follows:

i. Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)). Article 3 of the Plan adequately and properly identifies and classifies all Claims and Interests. The Plan designates four (4) Classes of Claims and one (1) Class of Interests. The Claims or Interests placed in each Class are substantially similar to other Claims or Interests, as the case may be, in each such Class, and such classification therefore satisfies section 1122 of the Bankruptcy Code. Valid business, factual, and legal reasons exist for the various Classes of Claims and Interests created under the Plan, and such Classes do not unfairly discriminate between holders of Claims or Interests. Thus, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

ii. Specified Treatment of Unimpaired Classes (11 U.S.C. § 1123(a)(2)). The Plan specifies in Article 3 that Class 1 (Priority Non-Tax Claims) and Class 3 (Allowed Other Secured Claims) are Unimpaired under the Plan within the meaning of section 1124 of the Bankruptcy Code, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

iii. Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). The Plan specifies in Article 3 that Class 2 (Allowed Prepetition Credit Agreement Secured Claims), Class 4 (Allowed General Unsecured Claims) and Class 5 (Interests) are Impaired under the Plan within the meaning of section 1124 of the Bankruptcy Code and sets forth the treatment of the Impaired Classes, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

iv. No Discrimination (11 U.S.C. § 1123(a)(4)). Article 5 of the Plan provides for the same treatment for each Claim or Interest in each respective Class unless the holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest. Accordingly, the Plan satisfies section 1123(a)(4) of the Bankruptcy Code.

v. Implementation of the Plan (11 U.S.C. § 1123(a)(5)). Article 7 of the Plan provides adequate and proper means for implementation of the Plan, thereby satisfying section 1123(a)(5) of the Bankruptcy Code.

vi. Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)). Article 7 of the Plan provides that each Liquidating Debtor shall be liquidated and dissolved to satisfy the provisions of the Plan and the Bankruptcy Code, including section 1123(a)(6). Accordingly, the Plan satisfies section 1123(a)(6) of the Bankruptcy Code.

vii. Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)). The Debtors have identified the proposed Plan Administrator who shall replace the directors and officers of the Liquidating Debtors. Officers of each of the Debtors immediately prior to the Effective Date will resign on the Effective Date. This administration of the Debtors is consistent with the interests of holders of Claims and Interests and with public policy and, thus, satisfies section 1123(a)(7) of the Bankruptcy Code.

viii. Impairment/Unimpairment of Classes of Claims and Interests (11 U.S.C. § 1123(b)(1)). In accordance with section 1123(b)(1) of the Bankruptcy Code and pursuant to section 1124 of the Bankruptcy Code, Articles 3 and 5 of the Plan classify and describe the treatment for the Unimpaired Classes and the Impaired Classes.

ix. Assumption and Rejection of Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)). In accordance with section 1123(b)(2) of the Bankruptcy Code, Article 9 of the Plan provides for the assumption, assumption and assignment, or rejection, if applicable, of the Executory Contracts and Unexpired Leases of the Debtors that have not been previously assumed or assumed and assigned pursuant to section 363 and 365 of the Bankruptcy Code by the Sale Order. Unless specifically assumed and assigned prior to the Effective Date of

the Plan, including under the Sale Order, all contracts and leases, if any, shall be deemed rejected as of the Effective Date.

x. Preservation of Causes of Action. Because all Causes of Action were sold to the Purchaser under the PSA and approved by the Sale Order, the Liquidating Debtors shall not retain and may not enforce any rights to commence or pursue any Causes of Action, whether arising before or after the Petition Date.

xi. Modification of Rights (11 U.S.C. § 1123(b)(5)). The Plan modifies the rights of holders of Claims in Class 2 (Allowed Prepetition Credit Agreement Secured Claims) Class 4 (Allowed General Unsecured Claims), and Interests in Class 5 (Interests), and leaves Unimpaired the rights of holders of Claims in Class 1 (Allowed Priority Non-Tax Claims) and Claims in Class 3 (Allowed Other Secured Claims).

xii. Additional Plan Provisions (11 U.S.C. § 1123(b)(6)). In accordance with section 1123(b)(6) of the Bankruptcy Code, the Plan includes additional provisions that are appropriate and consistent with the applicable provisions of the Bankruptcy Code and applicable law, including the release, discharge, injunction, and exculpation provisions set forth in Article 10 of the Plan.

xiii. Debtors Are Not Individuals (11 U.S.C. § 1123(c)). The Debtors are not individuals and section 1123(c) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases.

xiv. Cure of Defaults (11 U.S.C. § 1123(d)). In accordance with section 1123(d) of the Bankruptcy Code, the Sale Order previously provided for the satisfaction of cure claims associated with each Executory Contract or Unexpired Lease that was assumed pursuant

to the PSA and under the Sale Order in accordance with sections 363 and 365(b)(1) of the Bankruptcy Code.

N. Debtors' Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Scheduling Order, and other orders of this Court, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. In particular, the Debtors are proper debtors under section 109 of the Bankruptcy Code. The Debtors are also proper proponents of the Plan pursuant to section 1121(a) of the Bankruptcy Code. The Debtors, as proponents of the Plan, complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126(b) of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the Scheduling Order in transmitting the Plan, the Disclosure Statement, the Ballots and related documents and notices regarding the Plan and in soliciting and tabulating the votes on the Plan.

O. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith, for proper purposes, and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the formulation of the Plan and all modifications thereto. The Plan was negotiated and proposed with the intention of resolving these Chapter 11 Cases, and for no ulterior purpose. The Debtors' good faith is evident from the facts and records of the Chapter 11 Cases, the Disclosure Statement, the Plan, the record of the Combined Hearing and the other proceedings in these Chapter 11 Cases. The Plan has been proposed with the legitimate and honest purpose of implementing a chapter 11 liquidation of the Debtors and maximizing the value of the Estates to achieve the best interests of the Debtors' Creditors. The

Debtors and their agents, successors, predecessors, control persons, partners, members, officers, directors, employees and agents and their respective attorneys, financial advisors, investment bankers, accountants, and other professionals retained by such persons (i) acted in good faith in negotiating, formulating, and proposing, where applicable, the Plan, and the transactions approved by the Sale Order and (ii) will be acting in good faith in proceeding to (a) consummate the Plan, and the transactions, transfers, and documentation contemplated by the Plan and (b) take any actions authorized and directed or contemplated by this Confirmation Order. Thus, the Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code.

P. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). The procedures set forth in the Plan for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtors in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, satisfy the objectives of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code.

Q. Board of Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have sufficiently disclosed appointment of the Plan Administrator from and after the Effective Date in substitution for the management and board of directors for the Liquidating Debtors, including that no insider that will be employed or retained by the Liquidating Debtors and that no compensation that will be received by any insider of the Debtors. The appointment to, or continuance in, such office of each individual, and the methods established therefore, are consistent with the interests of holders of Claims and Interests, and with public policy. Therefore, section 1129(a)(5) of the Bankruptcy Code is satisfied with respect to the Plan.

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

S. Best Interests Test (11 U.S.C. § 1129(a)(7)). The liquidation analysis described in, and attached as Exhibit 2 to the Disclosure Statement, together with the Flavin Declaration, the Barton Declaration, and other evidence proffered or adduced at the Combined Hearing (i) are persuasive and credible, (ii) are based upon reasonable and sound assumptions, (iii) provide a reasonable estimate of the liquidation values of the Debtors in the event the Debtors were liquidated under Chapter 7 of the Bankruptcy Code, (iv) have not been controverted by other evidence or challenge and in any of the objections (if any) to confirmation of the Plan, and (v) establish that each holder of a Claim or Interest in an Impaired Class that is deemed to reject the Plan will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date. Therefore, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code.

T. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Classes 1 and 3 are Unimpaired by the Plan and, therefore, under section 1126(f) of the Bankruptcy Code, such Classes are conclusively presumed to have accepted the Plan. Classes 2 and 4 are each impaired and eligible to vote on the Plan. Class 2 voted to accept the Plan and was comprised of noninsider Allowed Claims. Class 4 voted by more than one half in number and more than two thirds in amount to accept the Plan. Accordingly, Bankruptcy Code section 1129(a)(8) has been satisfied with respect to Classes 1 through 4. Class 5 is deemed to reject the Plan pursuant to

Bankruptcy Code section 1126(g), but, as found below, the Plan is confirmable under Bankruptcy Code section 1129(b) notwithstanding the rejection by such Class.

U. Treatment of Administrative, Priority and Secured Tax Claims and Priority Non-Tax Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Expense Claims and Priority NonTax Claims under the Plan satisfies the requirements of section 1129(a)(9)(A) and (B) of the Bankruptcy Code, and the treatment of Priority Tax Claims under the Plan satisfies the requirements of section 1129(a)(9)(C) of the Bankruptcy Code.

V. Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)). Because Impaired Classes of Claims in Classes 2 and 4 voted to accept the Plan, section 1129(a)(10) of the Bankruptcy Code is satisfied with respect to the Plan.

W. Feasibility (11 U.S.C. § 1129(a)(11)). The evidence provided in support of Confirmation establishes that the Wind Down Amount will be sufficient to enable the Plan Administrator to perform the duties and functions outlined under the Plan and to satisfy post-Effective Date obligations. Furthermore, reasonable, persuasive, and credible evidence proffered or adduced at the Confirmation Hearing establishes that the Plan is feasible. Finally, given that the Plan provides for the eventual dissolution of each of the Liquidating Debtors and contemplates the liquidation or other final administration of all the Debtors' property, confirmation of the Plan is not likely to be followed by the need for further financial reorganization. Therefore, the Plan satisfies section 1129(a)(11) of the Bankruptcy Code.

X. Payment of Fees (11 U.S.C. § 1129(a)(12)). The Debtors have paid or, pursuant to the Plan, will pay by the Effective Date, fees payable under 28 U.S.C. § 1930, thereby satisfying section 1129(a)(12) of the Bankruptcy Code.

Y. Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(13)-(16)). Sections 1129(a)(13)-(16) are inapplicable as the Debtors (i) do not have retiree benefit obligations (1129(a)(13)), (ii) have no domestic support obligations (1129(a)(14)), (iii) are not individuals (1129(a)(15)), and (iv) are for-profit businesses (1129(a)(16)).

Z. Section 1129(b); Confirmation of Plan over Nonacceptance of Impaired Classes. Holders of Interests in Class 5 are deemed to have rejected the Plan (the “Rejecting Class”). All the requirements of section 1129(a) of the Bankruptcy Code, other than section 1129(a)(8) with respect to such Class, have been met. Notwithstanding the fact that the Rejecting Class rejected the Plan and thus section 1129(a)(8) is not satisfied with respect to such Class, the Plan may be confirmed pursuant to section 1129(b)(1) of the Bankruptcy Code because the Plan does not discriminate unfairly and is fair and equitable with respect to the Rejecting Class. After entry of this Confirmation Order and upon consummation of the Plan, the Plan shall be binding upon the members of the Rejecting Class.

AA. The Plan does not unfairly discriminate because members within each Class are treated similarly. Accordingly, the Plan does not discriminate unfairly with respect to the Rejecting Class or any other Class of Claims.

BB. The Plan is fair and equitable with respect to the Rejecting Class, because, in accordance with Bankruptcy Code section 1129(b)(2)(8) and (C), there are no holders of Claims or Interests junior to the holders of Class 5 who will receive or retain any property under the Plan. Moreover, pursuant to the Plan, no holders of Claims against the Debtors in Class 4 senior to the Rejecting Class 5 Interests are receiving more than full payment on account of such Claims against the Debtors. Accordingly, the Plan is fair and equitable and does not discriminate

unfairly, as required by section 1129(b) of the Bankruptcy Code and may be confirmed under Bankruptcy Code section 1129(b) notwithstanding the Rejecting Class's rejection of the Plan.

CC. Liquidation Analysis. The Liquidation Analysis attached as Exhibit 2 to the Disclosure Statement (and the supporting evidence adduced at the Combined Hearing) (i) is reasonable, persuasive, and credible as of the date such analysis was prepared (or such evidence as presented or proffered); (ii) uses reasonable and appropriate methodologies and assumptions; and (iii) demonstrates that because the Debtors have no Assets after closing of the Sale for distribution to creditors under the Plan other than the Wind Down Amount, Debtors' Creditors will receive a greater Distribution under the Plan from the Wind Down Amount than a hypothetical liquidation under chapter 7 of the Bankruptcy Code. All parties in interest have been given the opportunity to challenge the Liquidation Analysis.

DD. Only One Plan (11 U.S.C. § 1129(c)). Only one Plan is being sought to be confirmed in the Chapter 11 Cases. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

EE. Principal Purpose of Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933 (15 U.S.C. § 77e). Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

FF. Small Business Case (11 U.S.C. § 1129(e)). Section 1129(e) is inapplicable because these Chapter 11 Cases do not qualify as small business cases thereunder.

GG. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record before the Court, the Debtors and their agents, successors, predecessors, control persons, partners, members, officers, directors, employees and agents and their respective attorneys, financial

advisors, investment bankers, accountants, and other professionals retained by such persons, in each case, have acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and any applicable non-bankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with all their respective activities relating to the solicitation of acceptances to the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and therefore are not, and on account of such offer, issuance and solicitation will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and, to the extent such parties are listed therein, the exculpation provisions set forth in Article 10.4 of the Plan and Disclosure Statement.

HH. Satisfaction of Confirmation Requirements. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

II. Releases and Discharges. This Court has jurisdiction under sections 1334(a) and (b) of title 28 of the United States Code to approve the injunctions, exculpations, and releases set forth in Article 10 of the Plan. Each of the injunctions and releases set forth in Article 10 of the Plan are fair and necessary to the Plan, thereby satisfying the requirements of *In re Continental Airlines, Inc.*, 203 F.3d 203, 214 (3d Cir. 2000), and other applicable case law. The releases set forth in Article 10 of the Plan are consensual and approved. This Court’s findings of fact to support the approval of the Plan’s injunctions and releases provisions are based on the record established at the Combined Hearing, including the Flavin Declaration.

JJ. Plan Conditions to Consummation. Each of the conditions to the Effective Date, as set forth in Article 6 of the Plan, is reasonably likely to be satisfied or waived in accordance with the terms of the Plan.

KK. Waiver of Stay. Given the facts and circumstances of these Chapter 11 Cases, good cause exists for the waiver of the stay of effectiveness of this Confirmation Order imposed by Bankruptcy Rules 3020(e), 6004(h), 6006(d), 7062, 8001, 8002 or otherwise.

LL. Retention of Jurisdiction. The Court retains jurisdiction over the matters set forth in Article 11.4 of the Plan.

### **DECREES**

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

#### **General Provisions**

1. The findings and conclusions set forth above are hereby incorporated by reference as though fully set forth herein. The Court's findings of fact and conclusions of law set forth in the Court's prior orders remain in full force and effect.

#### **Confirmation of Plan and Related Matters**

2. Approval of Disclosure Statement. Pursuant to Bankruptcy Rule 3017(b), the provisionally approved Disclosure Statement is fully and finally approved under Bankruptcy Code sections 1125(a) and 1125(g).

3. Solicitation. The Debtors have complied with the solicitation of votes on the Plan in accordance with the Scheduling Order, sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, the Local Rules, all other applicable provisions of the Bankruptcy Code, and all other applicable rules, laws, and regulations.

4. Ballots. The forms of Ballots annexed as Exhibit 2 to the Scheduling Order were in compliance with Bankruptcy Rule 3018(c), and, as modified, substantially conform to Official Form Number 14, and are approved in all respects.

5. Confirmation. The Plan, as attached hereto as Exhibit A and only as modified by this Confirmation Order, including all provisions thereof and any exhibits attached thereto, is approved and confirmed under section 1129 of the Bankruptcy Code.

6. Confirmation Order Binding on All Parties. Subject to the provisions of the Plan and Bankruptcy Rule 3020(e), in accordance with section 1141(a) of the Bankruptcy Code and notwithstanding any otherwise applicable law, upon the occurrence of the Effective Date, the terms of the Plan and this Confirmation Order shall be binding upon, and inure to the benefit of: (a) the Debtors; (b) the Liquidating Debtors and Plan Administrator; (c) any and all holders of Claims or Interests (irrespective of whether such Claims or Interests are Impaired under the Plan or whether the holders of such Claims or Interests are deemed to have accepted or rejected the Plan or have been released under the Plan); (d) any other person giving, acquiring or receiving property under the Plan; (e) any and all non-Debtor parties to executory contracts or unexpired leases with any of the Debtors; and (f) the respective heirs, executors, administrators, trustees, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, guardians, successors or assigns, if any, of any of the foregoing. Except as otherwise set forth in the Plan, on the Effective Date, all releases, waivers, discharges, exculpations and injunctions set forth in the Plan shall be effective and binding on all Persons who may have had standing to assert any released, discharged, exculpated or enjoined causes of action, and no other Person or entity shall possess such standing to assert such causes of action after the Effective Date.

7. Notice. Notice of the Plan, the exhibits thereto (and all amendments and modifications thereto), the Disclosure Statement, and the Combined Hearing was proper and adequate.

8. Objections to the Plan Are Overruled. All objections, responses, statements, comments, and all reservations of rights that have not been withdrawn, waived or settled, pertaining to final approval of the Disclosure Statement or the confirmation of the Plan are OVERRULED in their entirety, on the merits, and with prejudice, and all withdrawn objections or responses are hereby deemed withdrawn with prejudice.

9. Authorization and Effectiveness of All Actions. All actions contemplated by the Plan are hereby authorized and approved in all respects (subject to the provisions of the Plan). The Debtors, the Liquidating Debtors, and the Plan Administrator (as applicable) are authorized to take all actions necessary or appropriate to enter into, implement, and consummate the contracts, instruments, releases, and other agreements or documents created in connection with the Plan. The approvals and authorizations specifically set forth in this Confirmation Order are nonexclusive and are not intended to limit the authority of any Debtor or Liquidating Debtor, any officer or director thereof, or the Plan Administrator, to take any and all actions necessary or appropriate to implement, effectuate and consummate any and all documents or transactions contemplated by the Plan or this Confirmation Order. Pursuant to this Confirmation Order, and other applicable law, the Debtors, the Liquidating Debtors, and the Plan Administrator are authorized and empowered, without action of their respective partners or members or boards of directors or managers (but subject to consent rights, if any, set forth in the Plan) to take any and all such actions as the Plan Administrator may determine are necessary or appropriate in his business judgment to implement, effectuate, consummate and perform any and all actions,

documents or transactions contemplated by the Plan or this Confirmation Order as reasonably required to implement the Plan and wind up the Debtors.

10. Revesting of Assets and Operation as of the Effective Date.

i. On the Effective Date, all property comprising the Wind Down Amount shall remain in each of the Debtors and, ultimately, in the Liquidating Debtors, for expenditures as provided in the Wind Down Budget and payable pursuant to the Plan, and until such time such amounts shall remain subject to the Liens and Security Interests in favor of the Class 2 Prepetition Secured Parties. To the extent that of the Wind Down Amount remains at the closing of the Chapter 11 Cases, such excess Cash shall be transferred to the Prepetition Secured Parties in accordance with the Plan.

ii. The Debtors and the Liquidating Debtors expressly disclaim any rights to prosecute any Causes of Action against any Person, given that all such Causes of Action were transferred to the Purchaser pursuant to the Sale.

iii. Without limiting the forgoing, to the extent that any holder of a Secured Claim that has been satisfied or discharged pursuant to the Plan, or any agent for such holder, has filed or recorded any Liens and/or security interests to secure such holder's Secured Claim, then as soon as practicable on or after the Effective Date, such holder (or the agent for such holder) shall take any and all steps requested by any of the Debtors, any of the Liquidating Debtors or the Purchaser under the Sale Order to cancel, remove, terminate, and/or extinguish such filings or records.

11. Cancellation of Interests in Fairway. Except as otherwise specifically provided for in the Plan, on the Effective Date: all Interests in Fairway, including without limitation, all purchase rights, instruments, guarantees, warrants, options, certificates, puts, agreements, and

other documents evidencing the right to acquire any such Interests in Fairway shall be cancelled, terminated and extinguished and the obligations of the Debtors thereunder or in any way related thereto shall be fully satisfied, released, and discharged.

12. As of the Effective Date, without any further action by the Court or the Plan Administrator, the Liens and security interests granted pursuant to the Prepetition Loan Documents will constitute legal, valid and enforceable Liens and security interests in all of the Collateral (comprised primarily of the Remaining Assets and the Wind Down Amount) and such Liens and security interests will constitute legal, valid and binding obligations of the Liquidating Debtors without any further act and without regard to any other federal, state or local requirements or law requiring notice, filing, registration, recording or possession of the Collateral, or other act to validate or perfect such security interest or lien. Notwithstanding the foregoing, the holder(s) of Liens under the Prepetition Loan Documents and the Liquidating Debtors are authorized to file, with the appropriate authorities, financing statements and other documents (the "Prepetition Secured Credit Perfection Documents"), or (subject to the terms of the Plan) to take possession or control over any Collateral in accordance with the terms of the Prepetition Credit Agreement, or to take any other action in order to evidence, validate, record or perfect such Liens or security interests: provided that no defect or failure in connection with such filing or action shall in any way limit, waive or alter the validity, enforceability, attachment, or perfection of the liens and security interests granted by virtue of the entry of this Confirmation Order.

13. Subject in all cases to the terms and provisions of the Prepetition Loan Documents, the Debtors and the Liquidating Debtors are authorized to execute and deliver to the Prepetition Secured Parties any such agreements, financing statements, instruments and other

documents, or obtain all governmental approvals and consents the Prepetition Secured Parties may reasonably request or that are required to establish and perfect such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and this Confirmation Order, and are authorized to cooperate to make all other filings and recordings that otherwise would be reasonably necessary under applicable law to perfect and/or give notice of such Liens and security interests to third parties; provided that no defect or failure in connection with such filing, recording, or other action shall in any way limit, waive or alter the validity, enforceability, attachment, or perfection of the liens and security interests granted by virtue of the entry of this Confirmation Order.

14. Executory Contracts and Unexpired Leases. On the Effective Date, all executory contracts or unexpired leases of the Debtors that were not assumed pursuant to a Final Order of the Court, including the Sale Order, shall be deemed rejected as of the Effective Date in accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code.

15. Deadlines and Claims Procedures. The bar dates and deadlines set forth in Articles 4 and 9 of the Plan, including, without limitation, the Administrative Claims Bar Date, are hereby approved. The claims procedures related to the rejection of executory contracts and unexpired leases set forth in Article 9 of the Plan are hereby approved.

16. Pursuant to Article 4 of the Plan, Professionals or other Persons asserting a Professional Claim for services rendered to the Debtors or any statutory committee appointed in these Chapter 11 Cases before the Effective Date must file and serve on the Debtors and such other Persons who are designated by the Bankruptcy Rules, this Confirmation Order or other

order of the Court an application for final allowance of such Professional Claim no later than 30 days after the Effective Date. Professional fees and expenses incurred by the Debtors, the Liquidating Debtors or the Plan Administrator and their professionals after the Effective Date may be paid from the amounts available under the Wind Down Budget by the Liquidating Debtors in the ordinary course of business and without application or Court approval. To the extent of any shortfall and subject to the express consent in its sole discretion of the Prepetition Secured Parties, the Liquidating Debtors may, but are not required to, access Net Distributable Assets as reasonably required and necessary to implement the Plan from and after the Effective Date.

17. Exemption from Certain Transfer Taxes. Pursuant to, and to the fullest extent permitted by, section 1146(a) of the Bankruptcy Code, any transfers of property in contemplation of, in connection with, or pursuant to the Plan shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States.

18. Payment of Fees. All fees due and payable pursuant to 28 U.S.C. § 1930 prior to the Effective Date shall be paid by the Debtors. All such fees that arise after the Effective Date shall be paid by the Liquidating Debtors. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

19. Dissolution of the Debtors. Promptly following the occurrence of the Effective Date and the appointment of the Plan Administrator to enable Distributions of all of the Debtors' and their Estates' property under the terms of the Plan, on or after the Effective Date, the Debtors' members, directors, managers, and officers and any remaining employees shall be deemed to have resigned and the entity dissolved for all purposes and of no further legal

existence under any applicable state or federal law, without the need to take any further action or file any plan of dissolution, notice, or application with the Secretary of State of the State of Delaware or any other state or government authority.

20. Releases, Limitations of Liability and Indemnification. The releases, the exculpation and limitation of liability provisions set forth in Article 10 of the Plan, and the indemnification obligations set forth in Article 7.6 of the Plan are incorporated in this Confirmation Order as if set forth in full herein and are hereby approved, authorized, effective, and binding subject to the respective terms thereof.

21. Injunctions. Except as otherwise provided in the Plan, all Persons and Entities who have held, hold or may hold Claims against or Interests in the Debtors that have been released pursuant to Article 10 of the Plan, or are subject to the Exculpation provided pursuant to Article 10.4 of the Plan, are permanently enjoined from and after the Confirmation Date, from taking any of the following actions: (a) commencing, conducting, or continuing in any manner, directly, or indirectly, any suit, action, or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative, or other forum) against or affecting the Debtors, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor-in-interest to, the Debtors, or any property of any such transferee or successor; (b) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, of any judgment, award, decree, or order against the Debtors, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Debtors, or any property of any such transferee or successor; (c) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any

kind against the Debtors, any of their property, or any direct or indirect transferee of any property of, or successor-in-interest to, any of the foregoing Entities; and (d) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

22. Furthermore, except as otherwise expressly provided in the Plan, as of the Effective Date, all Persons and Entities who have held, hold, or may hold claims released pursuant to Article 10 of the Plan, whether known or unknown, and their respective agents, attorneys, and all others acting for or on their behalf, shall be permanently enjoined on and after the Effective Date, with respect to any claim released pursuant to Article 10 of the Plan, from (a) commencing or continuing in any manner, any action or other proceeding of any kind with respect to any claim against them or the property of any of them; (b) seeking the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against any Debtor or the property of the Debtor; (c) creating, perfecting, or enforcing any encumbrance of any kind against any Debtor; and (d) taking any act, in any manner and in any place whatsoever, that does not conform to or comply with provisions of the Plan.

23. The rights afforded in the Plan and the treatment of all Claims and Interests therein shall be in exchange for and in complete satisfaction of all Claims and Interests of any nature whatsoever against the Debtors or any of their assets, property or estates. On the Effective Date, all such Claims against the Debtors shall be fully released, and the Interests shall be cancelled.

24. Except as otherwise expressly provided for in the Plan or in obligations issued pursuant thereto from and after the Effective Date, all Claims against the Debtors shall be fully released, and all Interests shall be cancelled, and the Debtors' liability with respect thereto shall

be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code. All persons shall be precluded from asserting against the Debtors, the Estates, the Liquidating Debtors, each of their respective successors and assigns, and each of their assets and properties, any other claims or interests based upon any documents, instruments or any act or omission, transaction or other activity of any kind or nature that occurred before the Effective Date.

25. Exculpations. Except as otherwise specifically provided in the Plan, no Exculpated Parties shall have or incur any liability whatsoever to any Person or Entity for any act taken or omission made in good faith in connection with or related to preparing, formulating, negotiating, implementing, disseminating, implementing, confirming, or consummating the Plan, the DIP Loan Documents, the PSA, the Sale Order, the Disclosure Statement, or any Plan Document, or any related agreement, instrument, or other document. No Exculpated Party shall have any liability to the Debtors, any Creditor, Interest holder, any other party-in-interest in the Bankruptcy Cases or any other Entity for actions taken or not taken under the Plan, in connection herewith or with respect thereto, or arising out of their administration of the Plan or the property to be distributed under the Plan, in good faith, including, without limitation, failure to obtain Confirmation or to satisfy any condition or conditions, or refusal to waive any condition or conditions, to the occurrence of the Effective Date; *provided, however*, that the foregoing exculpation shall not apply to any act of willful misconduct or fraud. All injunctions or stays in effect in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or any order of the Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or this Confirmation Order), shall remain in full force and effect until the Effective

Date. All injunctions, stays or exculpation provisions contained in the Plan or this Confirmation Order shall remain in full force and effect in accordance with their terms.

26. Notwithstanding anything contained in the Plan, this Confirmation Order or related documents (“Plan Documents”), nothing in the Plan Documents (1) discharges, releases, or exculpates the Debtors, the Liquidating Debtors or any non-debtor from any claim, liability or cause of action of the United States of America, its agencies, departments, or agents affects or impairs the ability of the United States of America, its agencies, departments, or agents to exercise its police and regulatory powers against the Debtors and/or the Liquidating Debtors; (2) shall affect or impair the United States’ rights to assert setoff and recoupment against the Debtors and/or the Liquidating Debtors and such rights are expressly preserved; (3) shall affect or impair the ability of the United States to make demand on, be paid by, or otherwise pursue any sureties that are jointly and severally liable with the Debtors and/or the Liquidating Debtors for any debt owed to the United States; or (4) shall constitute an approval or consent by the United States without compliance with all applicable legal requirements and approvals under non-bankruptcy law. Nothing in the Plan or this Confirmation Order discharges, releases, precludes, or enjoins any liability to a governmental unit on the part of any person or entity other than the Debtors.

27. Post-Confirmation Modifications. Without need for further order or authorization of the Court, the Debtors or the Liquidating Debtors, as applicable, are authorized and empowered to make any and all modifications to any and all documents that are necessary to effectuate the Plan that do not materially modify the terms of such documents and are consistent with the Plan (subject to any applicable consents or consultation rights set forth therein).

**Notice and Other Provisions**

28. Notice of Confirmation Order. On or before the fifth (5th) business day following the occurrence of the Effective Date, the Debtors shall serve notice of entry of this Confirmation Order (which may be combined with the Notice of Effective Date) pursuant to Bankruptcy Rules 2002(f)(7), 2002(k), and 3020(c), on (i) the U.S. Trustee; (ii) the holders of the 20 largest unsecured claims against the Debtors (on a consolidated basis); (iii) White & Case, Attn: David Turetsky and Andrew Zatz, on behalf of the Prepetition Secured Parties; (iv) all Holders of Claims and Equity Interests; and (v) all parties who have filed requests for notice in these cases under Bankruptcy Rule 2002, by causing a notice of this Confirmation Order in substantially the form of the notice annexed hereto as Exhibit B (the “Notice of Confirmation”), which form is hereby approved, to be delivered to such parties by first class mail, postage prepaid. Notice need not be given or served under the Bankruptcy Code, the Bankruptcy Rules, or this Confirmation Order to any Person to whom the Debtors mailed a Combined Hearing Notice, but received such notice returned marked “undeliverable as addressed,” “moved - left no forwarding address,” “forwarding order expired,” or similar reason, unless the Debtors have been informed in writing by such Person of that Person’s new address.

29. Mailing and publication of the Notice of Confirmation in the time and manner set forth in the preceding paragraphs shall be good and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c), and no other or further notice is necessary. The Notice of Confirmation shall constitute sufficient notice of the entry of this Confirmation Order to any filing and recording officers, and shall be a recordable instrument notwithstanding any contrary provision of applicable non-bankruptcy law.

30. Failure to Consummate Plan. If the Effective Date does not occur, then the Plan, the assumption or rejection of executory contracts or unexpired leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be null and void. In such event, nothing contained in the Plan or this Confirmation Order, and no acts taken in preparation for consummation of the Plan, shall, or shall be deemed to, (a) constitute a waiver or release of any Claims by or against or Interests in the Debtors or any other Person, (b) prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors, (c) constitute an admission of any sort by the Debtors or any other Person, or (d) be construed as a finding of fact or conclusion of law with respect thereto.

31. References to Plan Provisions. The failure to include or specifically reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Plan be confirmed in its entirety.

32. Exhibits. Each reference to a document, agreement or summary description that is in the form attached as an exhibit to the Plan in this Confirmation Order, or in the Plan shall be deemed to be a reference to such document, agreement or summary description in substantially the form of the latest version of such document, agreement or summary description filed with the Court (whether filed as an attachment to the Plan or filed separately).

33. Plan Provisions Mutually Dependent. The provisions of the Plan are hereby deemed non-severable and mutually dependent.

34. Confirmation Order Provisions Mutually Dependent. The provisions of this Confirmation Order are hereby deemed non-severable and mutually dependent.

35. Conflicts Between Confirmation Order and Plan. The provisions of the Plan and of this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; provided, however, that if there is determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall be deemed a modification of the Plan and shall control and take precedence.

36. Applicable Non-Bankruptcy Law. Pursuant to section 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of this Confirmation Order, the Plan, and related documents or any amendments or modifications thereto shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

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

38. Retention of Jurisdiction. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, this Court, except as otherwise provided in the Plan or herein, shall retain non-exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, but not limited to, the matters set forth in Article 11 of the Plan.

39. Governing Law. Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit hereto specifically provides otherwise, the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof.

40. Final Order. This Confirmation Order is a Final Order and the period in which an appeal must be filed shall commence upon the entry hereof.

41. Immediate Effectiveness. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 6006(d), 7062, 8001, 8002 or otherwise, immediately upon the entry of this Confirmation Order, the terms of the Plan, and this Confirmation Order shall be, and hereby are, immediately effective and enforceable and deemed binding upon the Debtors, the Liquidating Debtors, any and all holders of Claims or Interests (irrespective of whether such Claims or Interests are Impaired under the Plan or whether the holders of such Claims or Interests accepted, were deemed to have accepted, rejected or were deemed to have rejected the Plan), any trustees or examiners appointed in the Chapter 11 Cases, all persons and entities that are party to or subject to the releases, discharges, injunctions, stays and exculpations described in the Plan or herein, each person or entity acquiring property under the Plan, and any and all non-Debtor parties to executory contracts and unexpired leases with the Debtors and the respective heirs, executors, administrators, successors or assigns, affiliates, officers, directors, agents, representatives,

attorneys, beneficiaries, or guardians, if any, of any of the foregoing. The Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order.



33

**LAURIE SELBER SILVERSTEIN**  
**UNITED STATES BANKRUPTCY JUDGE**

**EXHIBIT A**

**Plan**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re</b>	§	<b>Chapter 11</b>
	§	
<b>FAIRWAY ENERGY, LP, et al.,<sup>1</sup></b>	§	<b>Case No. 18-12684 (LSS)</b>
	§	
<b>Debtors.</b>	§	<b>(Jointly Administered)</b>
	§	

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**FIRST AMENDED JOINT PLAN OF LIQUIDATION OF THE  
DEBTORS AND DEBTORS IN POSSESSION PURSUANT TO  
CHAPTER 11 OF THE BANKRUPTCY CODE**

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**HAYNES AND BOONE, LLP  
1221 McKinney Street, Ste. 2100  
Houston, Texas 77010  
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Facsimile: (713) 547-2600**

**-AND-**

**YOUNG CONAWAY STARGATT  
& TAYLOR, LLP  
1000 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253**

**ATTORNEYS FOR DEBTORS**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtors' federal tax identification number, include: Fairway Energy, LP (4200); Fairway Energy Partners, LLC (7914); and Fairway Energy GP, LLC (7808). The location of the Debtors' service address is 1000 Louisiana, Suite 1450, Houston TX 77002.

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Fairway Energy, LP, Fairway Energy Partners, LLC, and Fairway Energy GP, LLC (each, a “**Debtor**” and, together, the “**Debtors**”) hereby propose this *Joint Plan of Liquidation of the Debtors and Debtors in Possession Pursuant to Chapter 11 of the Bankruptcy Code* (the “**Plan**”). The Debtors are the proponents of the Plan within the meaning of Section 1129 of the Bankruptcy Code. Capitalized terms used in this Plan shall have the meanings set forth in Article 2 hereof.

## ARTICLE 1

### INTRODUCTION

#### 1.1 Introduction.

This Plan is proposed by and on behalf of the Debtors pursuant to Section 1121(a) of the Bankruptcy Code for the resolution of the outstanding Claims against and Interests in the Debtors. Reference is made to the Disclosure Statement accompanying the Plan for a discussion of the Debtors’ history, results of operations, historical financial information and properties, and for a summary and analysis of the Plan.

All Holders of Claims against the Debtors are encouraged to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan. No materials, other than the Disclosure Statement and any exhibits and schedules attached thereto or referenced therein, have been approved by the Debtors for use in soliciting acceptances or rejections of this Plan.

#### 1.2 General Plan Structure.

Substantially all of the Assets were sold pursuant to Section 363 of the Bankruptcy Code. The Debtors by this Plan seek to fully wind up their business and legal existence by the Effective Date. The Plan is a plan of liquidation that, among other things, provides for (a) the Distribution of the Wind Down Amount to pay allowed administrative expense claims and allowed priority claims against the Debtors, Plan Expenses, and to make Distributions to the Holders of allowed general unsecured claims, subject to the Wind Down Budget and (b) the appointment of a Plan Administrator to make such Distributions.

The execution and consummation of this Plan will be facilitated through the Plan Administrator. The Plan Administrator shall be authorized pursuant to the terms of this Plan to act on behalf of the Debtors to administer and liquidate, as appropriate, the Remaining Assets, and make Distributions pursuant to the terms of the Plan.

Only to the extent necessary, from and after the Effective Date, the Plan Administrator will act for the Liquidating Debtors in the same fiduciary capacity as applicable to a board of directors of the Debtors in implementing any further liquidation and wind down as contemplated under this Plan, subject to the provisions hereof, and shall, among other powers, wind up the affairs of the Liquidating Debtors. The initial Plan Administrator will be Gary Barton of Alvarez & Marsal.

The Plan is styled a “Joint Plan,” and the Plan shall, solely for the limited purposes of voting and Distribution in connection with the Plan, group the Debtors. The Bankruptcy Cases are not substantively consolidated, but the liquidation of assets and treatment of Claims for each Debtor will not be separately maintained and administered. Without limiting other provisions of the Plan, the Debtors specifically reserve the right to withdraw the Plan from consideration for confirmation as to all of the Debtors if the Plan is not confirmed.

## ARTICLE 2

### DEFINITIONS AND INTERPRETATION

In addition to such other terms as may be defined in other provisions of the Plan, the following capitalized terms shall have the following meanings:

#### 2.1 Definitions.

**2.1.1 “Administrative Expense Claim”** means (a) a Claim for any cost or expense of administration in connection with these Bankruptcy Cases of a kind specified in Sections 364(c)(1), 503(b), or 507(a)(2) of the Bankruptcy Code, including without limitation, the actual, necessary costs and expenses of preserving the Estates, including wages, salaries, or any other compensation for services, rendered on or after the Petition Date, (b) a Professional Claim and (c) a Claim on account of any fees and charges assessed against the Estates by the United States Trustee and due pursuant to 28 U.S.C. § 1930.

**2.1.2 “Administrative Expense Claim Bar Date”** means (a) June 7, 2019 at 4:00 p.m. (eastern time) with respect to the Administrative Expense Claims incurred from the Petition Date through May 8, 2019; and (b) with respect to Administrative Expense Claims arising after May 8, 2019, the date which is thirty (30) days following the Effective Date.

**2.1.3 “Allowed”** means, with respect to Claims, (a) any Claim against the Debtors, proof of which is timely Filed or determined by order of the Bankruptcy Court is not or will not be required to be Filed; (b) any Claim that has been or is hereafter listed in the Schedules as neither disputed, contingent, nor unliquidated, and for which no timely controverting Filed proof of Claim has been Filed; (c) the Prepetition Credit Agreement Secured Claims; (d) any Claim allowed pursuant to the Plan; or (e) any Claim that is otherwise allowed by Final Order, including, without limitation, the Confirmation Order, after notice and a hearing and, in each such case in (a) or (b) above, as to which either (i) no objection to the allowance thereof has been Filed by the Claims Objection Deadline, or (ii) such an objection is so Filed, but such objection has been withdrawn, overruled or denied and the Claim shall have been allowed pursuant to a Final Order (but only to the extent so allowed). A proof of claim that is not timely Filed (or not deemed timely Filed) shall not be Allowed for purposes of Distribution under the Plan.

**2.1.4 “Amended Organizational Documents”** means the current and latest forms of limited partnership agreement and limited liability company agreements of the Liquidating Debtors as modified by the Plan and the Confirmation Order.

**2.1.5 “Assets”** means all property of the Debtors and their Estates of any nature whatsoever as of the Effective Date.

**2.1.6 “Ballot”** means the ballot form accompanying the Disclosure Statement upon which Holders of Impaired Claims entitled to vote may indicate their acceptance or rejection of the Plan, which must be actually received on or before the Voting Deadline in accordance with the procedures set forth in any Order governing the solicitation process.

**2.1.7 “Bankruptcy Cases”** means the bankruptcy cases commenced by the Debtors in the Bankruptcy Court on the Petition Date and jointly administered for procedural purposes under *In re Fairway Energy, LP, et al.*, Case No. 18-12684.

**2.1.8 “Bankruptcy Code”** means title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*

**2.1.9 “Bankruptcy Court”** means the United States Bankruptcy Court for the District of Delaware.

**2.1.10 “Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court pursuant to 28 U.S.C. § 2075, as subsequently amended, and, where appropriate, any local rules, procedures, or standing orders of the Bankruptcy Court applicable to the Bankruptcy Cases.

**2.1.11 “Bar Date”** means the bar date established by the Bankruptcy Court as the last day for filing proofs of Claim against the Debtors, which for all entities except governmental units was March 7, 2019, and for governmental entities is May 28, 2019.

**2.1.12 “Business Day”** means any day except a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

**2.1.13 “Cash”** means cash and cash equivalents that evidence immediately available funds, including, without limitation, currency, certified checks, cashier’s checks, or wire transfers of immediately available funds from any source or a check drawn on a domestic bank.

**2.1.14 “Cash Collateral”** shall have the meaning set forth in section 363(a) of the Bankruptcy Code.

**2.1.15 “Causes of Action”** means any action, cause of action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, right to payment, Claim, or other liability (including a derivative claim) whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable directly or indirectly or derivatively, in law, equity, or

otherwise, including (a) Chapter 5 Causes of Action; (b) damages (general, exemplary, or both) relating to or based on (i) contract, fraud, negligence, gross negligence, willful misconduct, or any tort actions, (ii) violations of federal or state securities and competition laws, (iii) violations of applicable corporate or partnership laws, (iv) breaches of fiduciary or agency duties, or (v) causes of action based upon alter ego, any tort, or other liability theories; (c) damages based on any other claim of the Debtors, to the extent not specifically compromised or released pursuant to the Plan or an agreement referred to, or incorporated into, the Plan or Final Order entered after notice and opportunity for hearing; (d) any claim of the Debtors for equitable subordination under Section 510(c) of the Bankruptcy Code or under other applicable laws; (e) any claim of the Debtors to recharacterize one or more Claims as Interests; and (f) any unresolved objection to any Disputed Claim.

**2.1.16 “Chapter 5 Cause of Action”** means any Cause of Action arising under Sections 510, 544 through 551, and 553 of the Bankruptcy Code or otherwise arising under the Bankruptcy Code.

**2.1.17 “Claim”** means any claim against the Debtors or the Estates within the meaning of Section 101(5) of the Bankruptcy Code.

**2.1.18 “Claim Objection Deadline”** means the earlier of (i) the closing of the Bankruptcy Cases or (ii) the date which is one-hundred and twenty (120) days following the Effective Date, but which may in any event be further extended by Order of the Bankruptcy Court.

**2.1.19 “Class”** means any group of substantially similar Claims or Interests classified by the Plan pursuant to Section 1122 of the Bankruptcy Code.

**2.1.20 “Collateral”** means any property of a Debtor or Estate, or any interest in property of any Estate, that is subject to a valid, perfected, nonavoidable Lien, charge or other encumbrance to secure the payment or performance of a Claim.

**2.1.21 “Confirmation”** means the entry of a Confirmation Order approving this Plan.

**2.1.22 “Confirmation Date”** means the date the Confirmation Order is entered on the docket for the Bankruptcy Cases maintained by the Clerk of the Bankruptcy Court.

**2.1.23 “Confirmation Hearing”** means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan, as such may be continued from time to time, pursuant to Section 1129 of the Bankruptcy Code.

**2.1.24 “Confirmation Notice”** means notice of the Confirmation Hearing, substantially in the same form approved by the Bankruptcy Court pursuant to the Disclosure Statement Order.

**2.1.25 “Confirmation Order”** means the order signed by the Bankruptcy Court and caused to be entered that confirms this Plan pursuant to Section 1129 of the

Bankruptcy Code, as may be thereafter amended or supplemented; *provided* that the Confirmation Order shall be in form and substance reasonably satisfactory to the Prepetition Secured Parties.

**2.1.26 “Consummation”** means substantial consummation of the Plan as that term is used in Section 1127(b) of the Bankruptcy Code.

**2.1.27 “Creditor”** shall have the meaning set forth in in Section 101(10) of the Bankruptcy Code.

**2.1.28 “Debtors”** means Fairway Energy, LP, Fairway Energy Partners, LLC, and Fairway Energy GP, LLC, as debtors and debtors-in-possession. Reference to “Debtor” shall mean to such individual Debtor, as a debtor and debtor-in-possession, as the case may be.

**2.1.29 “Deficiency Claim”** means the amount by which an Allowed Claim exceeds the value of any Collateral securing such Claim as may be determined by the Bankruptcy Court in accordance with Section 506(a) of the Bankruptcy Code. A Deficiency Claim is a General Unsecured Claim but only if the holder of the Claim had recourse against the particular Debtor prior to any foreclosure of the Collateral securing such Claim.

**2.1.30 “DIP Agent”** means Riverstone Credit Management LLC, in its capacity as administrative agent under the DIP Credit Agreement.

**2.1.31 “DIP Credit Agreement”** means that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of November 28, 2018, among Fairway LP, as Holdings, FEP LLC, as Borrower, and Riverstone Credit Management, LLC, as administrative agent, and sole lead arranger, approved by the Bankruptcy Court pursuant to the Final DIP Order and as amended, supplemented, restated, or otherwise modified from time to time.

**2.1.32 “DIP Lender”** means, together with any successors and assigns permitted under the DIP Credit Agreement, Riverstone Credit Partners – Direct, LLC as the post-petition lender under the DIP Credit Agreement.

**2.1.33 “DIP Loan Documents”** shall have the meaning set forth in the Final DIP Order.

**2.1.34 “DIP Secured Parties”** means the DIP Lender together with the DIP Agent.

**2.1.35 “Disallowed Claim”** means any Claim, including any portion thereof, that has been disallowed, denied, dismissed, expunged or overruled, including, but not limited to, any Claim by one Debtor against another Debtor pursuant to 0 of the Plan.

**2.1.36 “Disclosure Statement”** means the *Disclosure Statement Under 11 U.S.C. § 1125 in Support of the Joint Plan of Liquidation of the Debtors and Debtors in*

*Possession Pursuant to Chapter 11 of the Bankruptcy Code* accompanying this Plan (including all exhibits and schedules thereto or referenced therein) regarding the Plan, as may be amended, supplemented, or otherwise modified.

**2.1.37 “Disclosure Statement Order”** means the Order conditionally approving the Disclosure Statement entered by the Bankruptcy Court in the Bankruptcy Cases.

**2.1.38 “Disputed Claim”** means the portion (including, when appropriate, the entirety) of a Claim that is not an Allowed Claim as to which: (a) a proof of Claim has been Filed, or deemed Filed under applicable law or order of the Bankruptcy Court; (b) an objection has been or may be timely Filed; and (c) such objection has not been withdrawn, overruled or denied in whole or in part pursuant to a Final Order. Before the time that an objection has been or may be Filed, a Claim shall be considered a Disputed Claim (A) if the amount or classification of the Claim specified in the proof of Claim exceeds the amount or classification of any corresponding Claim scheduled by the Debtors in the Schedules, to the extent of such excess, (B) in its entirety, if any corresponding Claim scheduled by the Debtors has been scheduled as disputed, contingent, or unliquidated in the Schedules, or (C) in its entirety, if no corresponding Claim has been scheduled by the Debtors in the Schedules. The Plan may also refer to a Disputed Claim in a specified Class; for example, a Disputed General Unsecured Claim is a Disputed Claim in the General Unsecured Claims Class.

**2.1.39 “Distribution”** means any property, interests in property or other value delivered or paid to Holders of Allowed Claims pursuant to the Plan.

**2.1.40 “Distribution Date”** shall mean any date on which the Plan Administrator determines that a Distribution shall be made.

**2.1.41 “Effective Date”** means a Business Day selected by the Debtors that is the first Business Day on which all conditions to the occurrence of the Effective Date specified herein have been satisfied or duly waived, including, without limitation, Confirmation of the Plan and the Confirmation Order having become a Final Order.

**2.1.42 “Entity”** shall have the meaning set forth in Section 101(15) of the Bankruptcy Code.

**2.1.43 “Estate”** means the bankruptcy estate created in each of the Debtors’ Bankruptcy Cases pursuant to Section 541 of the Bankruptcy Code.

**2.1.44 “Exculpated Parties”** means the Debtors and their Related Parties who are estate fiduciaries.

**2.1.45 “Executory Contracts”** means executory contracts and unexpired leases as such terms are used in Section 365 of the Bankruptcy Code, including all operating leases, capital leases, and contracts to which any Debtor is a party or beneficiary.

**2.1.46 “Face Amount”** means (a) with respect to a particular Claim, (i) if the Claim is listed in the Schedules and the holder of such Claim did not File a proof of

Claim within the applicable period of limitation fixed by the Bankruptcy Court pursuant to the Bankruptcy Code, the Bankruptcy Rules, or other applicable law, the amount of such Claim that is listed in the Schedules as not disputed, contingent, or unliquidated, or (ii) if the holder of such Claim has Filed a proof of Claim with the Bankruptcy Court within the applicable period of limitation fixed by the Bankruptcy Court pursuant to the Bankruptcy Code, the Bankruptcy Rules, or other applicable law, the liquidated amount stated in such proof of Claim, or such amount as is determined by the Final Order of the Bankruptcy Court; (b) in the case of an Administrative Expense Claim, the liquidated amount set forth in any application Filed with respect thereto, or the amount set forth in the Debtors' books and records or such amount as is determined pursuant to a Final Order; or (c) in all other cases, zero or such amount as shall be fixed or estimated pursuant to a Final Order.

**2.1.47 “Fairway”** means collectively, Fairway GP, Fairway, LP, and FEP LLC.

**2.1.48 “Fairway GP”** means Fairway Energy, GP, LLC, a Delaware limited liability company.

**2.1.49 “Fairway GP Schedules”** means the Schedule of Assets and Liabilities filed at Docket Number 105, and as amended filed at Docket Number 237.

**2.1.50 “Fairway LP”** means Fairway Energy, LP, a Delaware limited partnership.

**2.1.51 “Fairway LP Schedules”** means the Schedule of Assets and Liabilities filed at Docket Number 101.

**2.1.52 “FEP LLC”** means Fairway Energy Partners, LLC, a Delaware limited liability company.

**2.1.53 “FEP LLC Schedules”** means the Schedule of Assets and Liabilities filed at Docket Number 103.

**2.1.54 “File” or “Filed” or “Filing”** means file or filed or filing with the Bankruptcy Court in the Bankruptcy Cases.

**2.1.55 “Final Decree”** means the final decree closing the Bankruptcy Cases.

**2.1.56 “Final DIP Order”** means the *Final Order Pursuant to Sections 105, 361, 362, 363, and 364 of the Bankruptcy Code and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (A) Authorizing the Debtors to (I) Use Cash Collateral, (II) Obtain Secured Superpriority Postpetition Financing and Granting Liens and Superpriority Administrative Claims, (III) Provide Adequate Protection, and (B) Granting Related Relief* [Docket No. 142], as amended, supplemented or otherwise modified from time to time, including as modified and amended by the *Order: (I) Authorizing and Approving Waiver and Second Amendment to Senior Secured Superpriority Debtor-in-Possession Credit Agreement; and (II) Amending the Final DIP Order on Account of Such Amendment* [Docket No. 354].

**2.1.57 “Final Order”** means an order or judgment of a court that has not been reversed, amended, vacated, or stayed and as to which (a) the time to appeal or to seek certiorari or review, or move for re-argument or re-hearing has expired and as to which no appeal or petition for certiorari or review, or motion for re-argument or re-hearing has been timely filed, or (b) any timely filed appeal or petition for certiorari or review has been finally determined or dismissed; *provided, however*, that the possibility or reality that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed relating to such order, shall not cause such order not to be a Final Order.

**2.1.58 “General Unsecured Claim”** means any Claim that is not an Administrative Expense Claim, a Priority Claim, a Prepetition Credit Agreement Secured Claim, a Secured Tax Claim, or any Other Secured Claim. General Unsecured Claim includes a Deficiency Claim and Rejection Claim.

**2.1.59 “Governmental Unit”** shall have the meaning set forth in Section 101(27) of the Bankruptcy Code.

**2.1.60 “Holder”** means (a) as to any Claim, (i) the owner or holder of such Claim as reflected on the proof of Claim filed with respect to such Claim, or (ii) if no proof of Claim has been filed with respect to such Claim, the owner or holder of such Claim as shown on the Schedules or the Debtors’ books and records or as otherwise determined by the Bankruptcy Court; and (b) as to any Interest, the record owner or holder of such Interest as of the Petition Date as shown on the stock register maintained by the Debtors or as otherwise determined by the Bankruptcy Court.

**2.1.61 “Impaired”** shall have the meaning as set forth in Section 1124 of the Bankruptcy Code.

**2.1.62 “Indemnified Party”** means the Plan Administrator and his agents, representatives, attorneys, professionals, and employees.

**2.1.63 “Interest”** means any partnership interest, membership interest, shares or similar equity securities, whether or not transferrable or denominated “unit” or “stock” and whether issued, unissued, authorized or outstanding, and any similar interest in a Debtor.

**2.1.64 “Lien”** shall have the meaning as set forth in Section 101(37) of the Bankruptcy Code.

**2.1.65 “Liquidating Debtors”** shall be how the Debtors will be referred to after Confirmation of the Plan and occurrence of the Effective Date.

**2.1.66 “Liquidating Estates”** shall be how the Estates will be referred to after Confirmation of the Plan and occurrence of the Effective Date.

**2.1.67 “Net Distributable Assets”** means the Cash proceeds in the Debtors’ accounts prior to the date of the Closing of the Sale. For the avoidance of doubt, the Net Distributable Assets shall not include any of the Wind Down Amount.

**2.1.68 “Other Secured Claim”** means a Secured Claim other than the Prepetition Credit Agreement Secured Claim.

**2.1.69 “Person”** means natural persons, corporations, limited partnerships, general partnerships, limited liability companies, joint ventures, trusts, land trusts, business trusts, unincorporated organizations, or other legal entities, regardless of whether they are governments, agencies, or political subdivisions thereof.

**2.1.70 “Petition Date”** means November 26, 2018, the date upon which each of the Debtors filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code, commencing their respective Bankruptcy Case.

**2.1.71 “Plan”** means this *Joint Plan of Liquidation of the Debtors and Debtors in Possession Pursuant to Chapter 11 of the Bankruptcy Code*, including any amendments or modifications hereto as may hereafter be Filed in accordance with the requirements of Section 1127 of the Bankruptcy Code.

**2.1.72 “Plan Administrator”** means, effective as of the Effective Date, Gary Barton of Alvarez & Marsal North America, LLC, as the fiduciary responsible for, among other things, implementing the applicable provisions of the Plan, including those set forth in Section 7.3 of the Plan, or any duly selected successor.

**2.1.73 “Plan Administrator Agreement”** means an agreement to be entered into as of the Effective Date, by the Debtors and the Plan Administrator, which sets forth, among other things, the duties and compensation of the Plan Administrator, and which shall be in a form and substance satisfactory to the Prepetition Secured Parties. A copy of the Plan Administrator Agreement is attached hereto as Exhibit A.

**2.1.74 “Plan Documents”** means the agreements, documents, instruments, schedules and exhibits to the Plan required to implement the terms of the Plan, contemplated in the Plan, or entered into in furtherance of the Plan.

**2.1.75 “Plan Expenses”** means the actual and necessary fees, costs and expenses incurred or payable by the Liquidating Debtors following the Effective Date (including the fees and costs of the Plan Administrator as set forth herein) relating to implementation of the Plan, for the purpose of (i) resolving Claims and effectuating Distributions to Creditors under the Plan, (ii) otherwise implementing the Plan and closing the Bankruptcy Cases or (iii) undertaking any other matter relating to the Plan, which shall not be greater than the amounts set forth in the relevant line item in the Wind Down Budget.

**2.1.76 “Plan Supplement”** means the compilation of all Plan Documents to be entered into as of the Effective Date, as such may be altered, amended, or otherwise modified from time to time, forms of which will be filed by the Debtors no later than

seven (7) days prior to the deadline to object to confirmation of this Plan; *provided* that such documents shall be in form and substance reasonably satisfactory to the Prepetition Secured Parties.

**2.1.77 “Prepetition Agent”** means Riverstone Credit Partners, L.P., as administrative agent and sole lead arranger under the Prepetition Credit Agreement.

**2.1.78 “Prepetition Credit Agreement”** means that certain Senior Secured Term Loan Credit Agreement, by and between FEP LLC, as borrower, Riverstone, as the Prepetition Agent, and the Prepetition Lenders, dated March 29, 2017, as amended, restated, supplemented or otherwise modified from time to time, together with all exhibits thereto.

**2.1.79 “Prepetition Credit Agreement Secured Claims”** means the Secured Claims of the Prepetition Secured Parties under the Prepetition Loan Documents.

**2.1.80 “Prepetition Lenders”** shall have the meaning set forth in the Final DIP Order.

**2.1.81 “Prepetition Liens”** shall have the meaning set forth in the Final DIP Order.

**2.1.82 “Prepetition Loan Documents”** shall have the meaning set forth in the Final DIP Order.

**2.1.83 “Prepetition Secured Parties”** means, collectively, the Prepetition Agent and the Prepetition Lenders.

**2.1.84 “Priority Claim”** means a Claim that is either a Priority Tax Claim or a Priority Non-Tax Claim.

**2.1.85 “Priority Non-Tax Claim”** means a Claim, other than an Administrative Expense Claim or a Priority Tax Claim, entitled to priority in payment under Section 507(a) of the Bankruptcy Code.

**2.1.86 “Priority Tax Claim”** means a Claim entitled to priority in payment pursuant to Sections 502(i) and 507(a)(8) of the Bankruptcy Code.

**2.1.87 “Professional”** means each Entity either (a) employed by an order of the Bankruptcy Court in accordance with Sections 327 or 1103 of the Bankruptcy Code providing for compensation for services rendered prior to the Effective Date pursuant to Sections 327, 328, 329, 330, and 331 of the Bankruptcy Code; or (b) seeking compensation and reimbursement pursuant to Section 503(b)(2) or (4) of the Bankruptcy Code.

**2.1.88 “Professional Claim”** means a Claim of a Professional for (a) compensation or reimbursement of actual and necessary costs and expenses relating to services provided after the Petition Date and prior to and including the Effective Date that

is allowed by the Bankruptcy Court, or (b) for compensation and reimbursement that is allowed by the Bankruptcy Court pursuant to Section 503(b)(2) or (4) of the Bankruptcy Code.

**2.1.89 “PSA”** shall mean that Asset Purchase and Sale Agreement by and between Fairway, as seller, and the Purchaser, dated April 12, 2019.

**2.1.90 “Purchased Assets”** shall have the meaning set forth in the PSA.

**2.1.91 “Purchaser”** shall refer to Converge Midstream, LLC f/k/a Fairway New Co LLC, the purchaser of the Purchased Assets pursuant to the PSA.

**2.1.92 “Rejection Claim”** means any Claim arising from, or relating to, the rejection of any executory contract or unexpired lease pursuant to Section 365(a) of the Bankruptcy Code pursuant to this Plan, including, but not limited to, any Claim of (a) a lessor for damages resulting from the rejection of a lease of real property as any such Claim shall be calculated in accordance with Section 502(b)(6) of the Bankruptcy Code; or (b) an employee for damages resulting from the rejection of an employment agreement as any such Claim shall be calculated in accordance with Section 502(b)(7) of the Bankruptcy Code. A Rejection Claim shall constitute a General Unsecured Claim.

**2.1.93 “Rejection Claim Bar Date”** means, unless otherwise established by Final Order of the Bankruptcy Court, the date established pursuant to Section 365 of the Bankruptcy Code but in no event later than thirty (30) days after the Effective Date.

**2.1.94 “Related Parties”** means with respect to any Entity, the current and former officers, directors, agents, attorneys, advisors, employees, professionals, shareholders, partners (general or limited), affiliates, members, principals, managers, partners (general or limited), equity holders, trustees, executors, predecessors in interest, successors, heirs, or assigns of any such Entity; and their current and former affiliates’ subsidiaries, officers, directors, agents, attorneys, advisors, employees, professionals, shareholders, partners (general or limited), members, principals, managers, equity holders, trustees, executors, representatives, predecessors in interest, successors, heirs, or assigns of any such Entity.

**2.1.95 “Released Parties”** means, collectively, (a) J. Chris Jones, Arthur L. Smith, William T. Wilson, Jim P. Wise, Porter Bennett, M. Scott Jones, Dana A. Grams, Nicholas L. Swyka, Jr., Robert M. Flavin, James V. Scandola, Mark Erskine, and Christopher Hilgert, which include the Debtors’ executive management, and the Debtors’ present and former board members, (b) the Debtors, (c) the DIP Secured Parties, (d) the Prepetition Secured Parties, (e) Riverstone, and (f) any Holder of a Class 5 Interest that has not delivered a Release Opt Out Form in accordance with the procedures set forth in the Disclosure Statement Order by the Voting Deadline, and, with respect to the persons named in (b) through (e), their Related Parties.

**2.1.96 “Release Opt Out Form”** means the form to be sent to Holders of Class 5 Interests for the purposes of opting out of the release provisions contained in Article 10.2.3 hereof.

**2.1.97 “Releasing Parties”** means, collectively, (i) the Holders of all Claims or Interests who vote to accept the Plan; (ii) the Holders of Claims or Interests that are Unimpaired under the Plan and do not object to the releases set forth herein; (iii) the Holders of Claims or Interests whose vote to accept or reject the Plan is solicited but who do not vote either to accept or to reject the Plan and do not opt out of granting the releases set forth herein; and (iv) any Holder of a Class 5 Interest that has not delivered a Release Opt Out Form in accordance with the procedures set forth in the Disclosure Statement Order by the Voting Deadline. For the avoidance of doubt, the Purchaser shall not be a Releasing Party.

**2.1.98 “Remaining Assets”** means all Assets not conveyed under the PSA, which, for the avoidance of doubt, shall mean the Excluded Assets (as defined in the PSA).

**2.1.99 “Riverstone”** means, collectively, Riverstone Credit Partners, L.P., Riverstone Credit Partners—Direct, LLC, and Converge Midstream, LLC f/k/a Fairway New Co LLC.

**2.1.100 “Sale”** means the sale of the Purchased Assets pursuant to the term and the conditions of the PSA and approved by the Bankruptcy Court pursuant to the Sale Order.

**2.1.101 “Sale Order”** means the *Order (A) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Authorizing and Approving the Debtors’ Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith, and (C) Granting Related Relief entered in the Bankruptcy Cases* [Docket No. 330].

**2.1.102 “Schedules”** means the Fairway GP Schedules, Fairway LP Schedules, and FEP LLC Schedules.

**2.1.103 “Secured Claim”** means a Claim that arose before the Petition Date, to the extent secured by a Lien or other security interest on property of the Debtors, which Lien is valid, perfected, and enforceable under applicable law and which is not subject to avoidance under the Bankruptcy Code or other applicable non-bankruptcy law and which is duly established in the Bankruptcy Cases, to the extent of the value of such property (a) as set forth in the Plan, (b) as agreed to by the holder of such Claim and the Debtors, or (c) as determined pursuant to a Final Order in accordance with Section 506(a) or, as applicable, Section 553 of the Bankruptcy Code to the extent of such setoff.

**2.1.104 “Secured Tax Claim”** means a Secured Claim of a Governmental Unit for property taxes assessed or for property taxes if and to the extent that the Lien securing such Claim attached under applicable law before the commencement of the Bankruptcy Cases.

**2.1.105 “Secured Tax Entities”** means any governmental entity asserting or having an ad valorem tax claim secured by valid, enforceable and non-avoidable Liens against any of the Debtors.

**2.1.106“Solicitation Package”** means the package sent to Holders of Claims in Classes 2 and 4 including (a) ballot (and return envelope) to be used in voting to accept or to reject the Plan; (b) the Disclosure Statement and Plan; (c) the Disclosure Statement Order, (d) the notice of, among other things, (i) the date, time and place of the Confirmation Hearing and (ii) the deadline for filing objections to confirmation of the Plan; and (e) other materials as authorized by the Bankruptcy Court.

**2.1.107“Unclaimed Property”** means any Distribution made to the Holder of an Allowed Claim pursuant to the Plan that is returned to the Debtors, the Liquidating Debtors, or the Plan Administrator as undeliverable and no appropriate forwarding address is received prior to the date on which the Final Decree is entered in the Bankruptcy Cases. Unclaimed Property shall include: (a) checks (and the funds represented thereby) mailed to an address of a holder of an Allowed Claim and returned as undeliverable without a proper forwarding address; (b) funds for uncashed checks; and (c) checks (and the funds represented thereby) not mailed or delivered because no address to mail or deliver such property was available.

**2.1.108“Unimpaired”** means a Claim that is not Impaired.

**2.1.109“United States Trustee”** means the Office of the United States Trustee for Region 3.

**2.1.110“Unsecured Claims Cash Pool”** means an amount that is up to \$500,000 from the Wind Down Amount.

**2.1.111“Voting Deadline”** means July 8, 2019 at 4:00 p.m. eastern time, the deadline by which Ballots must be received by the Debtors, for such Ballots to be counted as voting in favor of or against the Plan. The Voting Deadline is established by the Bankruptcy Court in the Disclosure Statement Order.

**2.1.112“Voting Procedures”** means the procedures for submitting a Ballot to vote for or against the Plan as described in the Disclosure Statement.

**2.1.113“Voting Record Date”** means May 29, 2019 as established in the Disclosure Statement Order.

**2.1.114“Wind Down Amount”** means the total amount of Cash, including Cash in retainers established in accounts with the Professionals, and any proceeds from the liquidation of any Remaining Asset, in an amount necessary to pay in full outstanding Allowed Administrative Expense Claims (including Allowed Professional Claims), Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Allowed General Unsecured Claims, and Plan Expenses, up to the amounts set forth in the Wind Down Budget; *provided* that, to the extent that any excess Cash remains at the closing of the Bankruptcy Cases, such excess Cash shall be transferred to the Prepetition Secured Parties in accordance with the Plan.

**2.1.115“Wind Down Budget”** means the budget attached as Exhibit D to the PSA (and for ease of reference, attached as Exhibit B to this Plan), as may be

supplemented or amended after the date hereof by prior written agreement of the Debtors and Prepetition Secured Parties.

## **2.2 Interpretation, Rules of Construction, and Other Terms.**

**2.2.1** Any term used in this Plan that is not defined herein, whether in this article or elsewhere, but that is used in the Bankruptcy Code or the Bankruptcy Rules, has the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules and shall be construed in accordance with the rules of construction thereunder.

**2.2.2** The words “herein,” “hereto,” “hereof,” “hereunder,” and others of similar import, refer to the Plan as a whole and not to any particular article, section, or clause contained in this Plan.

**2.2.3** Unless specified otherwise in a particular reference, a reference in this Plan to an article or section is a reference to that article or section of this Plan.

**2.2.4** Unless otherwise provided for herein, any reference in this Plan to an existing document or instrument means such document or instrument as it may have been amended, modified, or supplemented from time to time.

**2.2.5** As contextually appropriate, each term stated in either the singular or plural shall include both the singular and the plural.

**2.2.6** In addition to the foregoing, the rules of construction set forth in Section 102 of the Bankruptcy Code shall apply to this Plan.

**2.2.7** In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

**2.2.8** The section headings contained in the Plan are for reference purposes only and shall not affect in any way the meaning or interpretation of the Plan.

**2.2.9** All exhibits to this Plan and the Plan Supplement are incorporated into this Plan and shall be deemed to be included in this Plan, and to the extent not annexed hereto, such exhibits and Plan Supplement shall be timely Filed in accordance with this Plan.

## **2.3 Controlling Document.**

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. The provisions of the Plan and of the Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; *provided, however*, that if there is any inconsistency between a Plan provision and a provision of the Confirmation Order, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provision of the Confirmation Order shall be deemed a modification of the Plan and shall control and take precedence.

## ARTICLE 3

### CLASSIFICATION OF CLAIMS AND INTERESTS

#### 3.1 Grouping of the Debtors for Convenience.

This Plan groups the Debtors together solely for the purposes of describing treatment under this Plan, confirmation of this Plan, and making Distributions. Unless set forth in this Plan, this grouping shall not affect any Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities, or cause the transfer of any assets. This Plan is not premised upon and shall not cause the substantive consolidation of the Debtors or any non-Debtor affiliate, and, except as otherwise provided by or permitted under this Plan, all Debtors shall continue to exist as separate legal entities.

#### 3.2 Administrative Expenses and Priority Tax Claims.

As provided in Section 1123(a) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims, shall not be classified for purposes of voting or receiving Distributions under the Plan. Rather, all such claims shall be treated separately as unclassified claims on the terms set forth in ARTICLE 4 of the Plan.

#### 3.3 Classes of Claims and Interests.

A Claim or Interest is classified in a particular Class only to the extent that such Claim or Interest qualifies within the description of that Class and is classified in another Class or Classes to the extent that any remainder of the Claim or Interest qualifies within the description of such other class or classes. A Claim or Interest is in a particular Class only to the extent the Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released or otherwise satisfied before the Effective Date. Notwithstanding anything to the contrary contained in the Plan, no Distribution shall be made on account of any Claim or Interest which is not an Allowed Claim or Allowed Interest.

#### 3.4 Identification of Classes.

For purposes of organization, voting, Distributions pursuant to the Plan, and all Confirmation matters, except as otherwise provided herein, all Claims (except for the Administrative Expense Claims and Priority Tax Claims) and Interests shall be classified as follows:

**3.4.1 Class 1 – Priority Non-Tax Claims:** Class 1 consists of all Allowed Priority Non-Tax Claims. Class 1 is Unimpaired under the Plan. Class 1 is therefore conclusively presumed to have accepted the Plan and Holders of Claims in Class 1 are not entitled to vote to accept or reject the Plan.

**3.4.2 Class 2 – Allowed Prepetition Credit Agreement Secured Claims:** Class 2 consists of the Allowed Prepetition Credit Agreement Secured Claims. Class 2 is

Impaired under the Plan, and Holders of Claims in Class 2 are entitled to vote to accept or reject the Plan.

**3.4.3 Class 3 – Allowed Other Secured Claims:** To the extent applicable and not otherwise paid in full by the closing of the transactions under the Sale Order, Class 3 consists of all Allowed Secured Claims other than those in Class 2. Class 3 is Unimpaired under the Plan. Class 3 is therefore conclusively presumed to have accepted the Plan and Holders of Claims in Class 3 are not entitled to vote to accept or reject the Plan.

**3.4.4 Class 4 – Allowed General Unsecured Claims:** Class 4 consists of Unsecured Claims. Class 4 is Impaired under the Plan, and Holders of Claims in Class 4 are entitled to vote to accept or reject the Plan.

**3.4.5 Class 5 – Interests:** Class 5 consists of the Holders of Interests in the Debtors. Class 5 is Impaired under the Plan. Holders of Interests in Class 5 will not retain their Interests under the Plan, and no Distribution on account of such Interests will be made and such Interests shall be deemed cancelled as of the Effective Date. Accordingly, the Holders of Interests in Class 5 are conclusively presumed to have rejected the Plan and therefore will not be entitled to vote to accept or reject the Plan.

### **3.5 Voting and Acceptance by Impaired Classes of Claims.**

Holders of Claims in Classes 2 and 4 shall be entitled to vote separately to accept or reject the Plan. An Impaired, voting Class of Claims has accepted the Plan if the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in such Class actually voting have voted to accept the Plan.

### **3.6 Elimination of Classes for Voting Purposes.**

Any Class that is not occupied as of the date of the commencement of the Confirmation Hearing by an Allowed Claim, an Allowed Interest, or a Claim or Interest temporarily allowed under Bankruptcy Rule 3018 or as to which no vote is cast shall be deemed deleted from the Plan for purposes of voting on acceptance or rejection of the Plan by such Class under Bankruptcy Code § 1129(a)(8).

### **3.7 Controversy Concerning Classification, Impairment or Voting Rights.**

In the event a controversy or dispute should arise involving issues related to the classification, impairment or voting rights of any Creditor or Interest Holder under the Plan, whether before or after the Confirmation Date, the Bankruptcy Court may, after notice and a hearing, determine such controversy. Without limiting the foregoing, the Bankruptcy Court may estimate for voting purposes the amount of any contingent or unliquidated Claim the fixing or liquidation of which, as the case may be, would unduly delay the administration of the Bankruptcy Cases.

## ARTICLE 4

### TREATMENT OF CERTAIN UNCLASSIFIED CLAIMS

Except as otherwise provided for in the Plan or any prior Order Establishing an Administrative Claims Bar Date, all requests for payment of Administrative Expense Claims arising on or before the Confirmation Date not previously filed must be filed with the Bankruptcy Court within thirty (30) days after the Effective Date. All requests for payment of Professional Claims must be filed with the Bankruptcy Court within thirty (30) days after the Effective Date. Any Administrative Expense Claims or Professional Claims for which a request for payment is not filed by the deadline specified by the Plan shall be discharged and forever barred.

#### **4.1 Treatment of Administrative Expense Claims.**

**4.1.1** On or before the Effective Date, the Debtors shall pay or have deposited in trust all amounts owing to the Professionals for all outstanding Professional Claims that have been allowed by the Bankruptcy Court, but which were unpaid as of the Effective Date. On or prior to the applicable Administrative Expense Claim Bar Date, each Professional required to do so shall File with the Bankruptcy Court a final fee application seeking final approval of all fees and expenses from the Petition Date through the Effective Date. Objections to Professional final fee applications must be Filed and served on the Plan Administrator and the Professionals to whose application the objections are addressed no later than twenty-four (24) days after filing of the relevant final fee application. The Liquidating Debtors shall pay any outstanding amounts owed to a Professional within three (3) days after entry of a Final Order with respect to such Professional's final fee application. Any amounts previously paid to a Professional, but not supported by the Final Order with respect to such Professional's final fee application, shall be paid directly to the Prepetition Secured Parties, on account of the Prepetition Credit Agreement Secured Claims, in accordance with Section 7.5 of the Plan.

**4.1.2** Under the Plan, on or as soon as practicable after the Effective Date (to the extent payable on the Effective Date), each Holder of an Allowed Administrative Expense Claim, other than the Professional Claims, shall receive, in full satisfaction, settlement, release, and extinguishment of such Allowed Administrative Expense Claim, Cash from the Liquidating Debtors equal to the full amount of such Allowed Administrative Expense Claim, or such other treatment as the Liquidating Debtors and such Holder shall have agreed to in writing. Notwithstanding the foregoing, if an Allowed Administrative Expense Claim represents an obligation incurred in the ordinary course of business, such Allowed Administrative Expense Claim will be paid by the Liquidating Debtors when due.

**4.1.3** Holders of Administrative Expense Claims (including, without limitation, Holders of Professional Claims) that are required to File a request for payment of such Claims and that do not File such requests by the applicable Administrative Expense Claim Bar Date are forever barred from asserting such Claims against the Debtors, the Liquidating Debtors, or any of their respective property.

**4.1.4** Allowed Administrative Expense Claims shall be paid from the Wind Down Amount in accordance with the Wind Down Budget.

**4.1.5** In accordance with the applicable Professionals' retention orders, Professionals shall apply any retainer amounts remaining at the time of their final fee applications in satisfaction of their Professional Claims. Notwithstanding any other provision of the Plan, all fees, expenses, and other compensation arising after the Effective Date and due and payable to Professionals retained by the Plan Administrator shall be paid (a) first, by the Plan Administrator from the Wind Down Amount in accordance with Wind Down Budget and (b) thereafter, by the Plan Administrator from the Remaining Assets of the Liquidating Debtors subject to the provisions of Section 7.5 of the Plan.

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

**4.2.1** To the extent not otherwise paid in full by the closing of the transactions under the Sale Order, as required by Section 1129(a)(9) of the Bankruptcy Code, on or as soon as practicable after the Effective Date, each Holder of an Allowed Priority Tax Claim shall receive, in full satisfaction, settlement, release, and extinguishment of such Allowed Priority Tax Claim, Cash from the Liquidating Debtors equal to the portion of the Allowed Priority Tax Claim due and payable on or prior to the Effective Date according to applicable non-bankruptcy law except as assumed by the Purchaser under the PSA. Any Allowed Priority Tax Claim (or portion thereof) against the Debtors not yet due and payable as of the Effective Date shall be paid by the Purchaser. Any Holder of a Priority Tax Claim may agree to accept different treatment as to which the Liquidating Debtors, the Purchaser, and such Holder have agreed to in writing.

**4.2.2** To the extent interest is required to be paid on any Allowed Priority Tax Claim, the rate of such interest shall be the rate determined under applicable non-bankruptcy law; *provided, however*, that any Claim or demand for payment of a penalty (other than a penalty of the type specified in Section 507(a)(8)(G) of the Bankruptcy Code) shall be disallowed pursuant to the Plan, and the Holder of an Allowed Priority Tax Claim shall not be allowed to assess or attempt to collect such penalty from the Debtors, the Liquidating Debtors or their Estates, the Purchaser, or their respective property.

#### **4.3 Payment of Statutory Fees.**

All fees payable on or before the Effective Date pursuant to 28 U.S.C. § 1930, shall be paid by the Debtors as and when due from the Wind Down Amount. All such fees payable after the Effective Date shall be paid by the Liquidating Debtors through the Plan Administrator. Notwithstanding anything to the contrary in the Plan, the United States Trustee shall not be required to file a proof of claim for administrative expenses.

#### **4.4 Disallowance of Special Taxes.**

The issuance, transfer, or exchange of a security as defined under the Bankruptcy Code or applicable law, or the making or delivery of any instrument of transfer under this Plan shall not be taxed under any state or local law imposing a stamp tax or similar tax as provided in Section 1146 of the Bankruptcy Code.

### **ARTICLE 5**

#### **TREATMENT OF CLASSES**

##### **5.1 Treatment of Class 1– Allowed Priority Non-Tax Claims.**

**5.1.1** Unless otherwise provided for pursuant to an order of the Bankruptcy Court, at the election of the Liquidating Debtors, the Holder of each Allowed Priority Non-Tax Claim shall receive, in full satisfaction, settlement, release, and extinguishment of such Allowed Priority Non-Tax Claim, on or as soon as practicable after the later of (a) the Effective Date, or (b) the date upon which the Bankruptcy Court enters a Final Order determining or allowing such Claim, (i) a Cash payment from the Liquidating Debtors equal to the Allowed amount of such Claim, or (ii) such other treatment as may be agreed to by the Liquidating Debtors and the Holder of such Claim.

##### **5.2 Treatment of Class 2 – Allowed Prepetition Credit Agreement Secured Claims.**

**5.2.1** The Prepetition Agent shall receive, for and on behalf of the Prepetition Secured Parties, (i) on the Effective Date or as soon as reasonably practicable thereafter, payment in cash in full of all reasonable professional fees of the Prepetition Agent and (ii) on the date the Bankruptcy Cases are closed or as soon as reasonably practicable thereafter, any excess Cash from the Wind Down Amount, after the payment of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Plan Expenses, Allowed Priority Non-Tax Claims, and Allowed General Unsecured Claims (each as set forth and in accordance with the Plan and the Wind Down Budget).

##### **5.3 Treatment of Class 3 – Allowed Other Secured Claims.**

**5.3.1** Treatment of Class 3: To the extent not otherwise paid in full by the closing of the transactions under the Sale Order, unless otherwise provided for pursuant to an order of the Bankruptcy Court, and except to the extent a Holder of an Allowed Other Secured Claim has been paid by the Debtors prior to the Effective Date, on the Effective Date, at the option of the Liquidating Debtors, (a) the Liquidating Debtors shall

surrender all Collateral securing such Claim to the Holder thereof, in full satisfaction of such Holder's Allowed Other Secured Claim; (b) such Holder shall receive the proceeds from the liquidation of such Holder's Collateral under the closing of the transactions in the Sale Order; or (c) such Holder shall receive such other treatment as may be agreed to by the Liquidating Debtors and the Holder of such Allowed Other Secured Claim in writing. The Secured Tax Claim of the Secured Tax Entities for the year 2019 and subsequent years have been assumed by the Purchaser under the PSA and the Sale Order and is therefore not entitled to a Distribution under the Plan.

**5.3.2 Deficiency Claim:** If the Holder of an Allowed Other Secured Claim has a Deficiency Claim, such Claim shall be treated under the Plan as a General Unsecured Claim.

#### **5.4 Treatment of Class 4 – Allowed General Unsecured Claims.**

**5.4.1 Treatment of Class 4:** Unless otherwise provided for pursuant to an order of the Bankruptcy Court or in the paragraph below, except to the extent that the Holder of an Allowed General Unsecured Claim shall have agreed in writing to a different treatment, each Holder of an Allowed General Unsecured Claim in Class 4 shall receive in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed General Unsecured Claim, their pro rata share of (a) the Unsecured Claims Cash Pool, and (b) Net Distributable Assets until all Allowed General Unsecured Claims in Class 4 are paid in full or all of the Assets of the Liquidating Estates have been distributed. Distributions to Holders of Allowed General Unsecured Claims in Class 4 shall be made at such time or times that the Plan Administrator, in his discretion, determines that a Distribution to Holders of Allowed General Unsecured Claims in Class 4 is appropriate, taking into consideration the number and amount of General Unsecured Claims in Class 4 that remain in dispute.

**5.4.2 Deficiency Claim.** Class 4 shall include the Deficiency Claim of the Prepetition Lenders not otherwise satisfied in Class 2. If Class 4 accepts the Plan, no Distributions shall be made to the Prepetition Agent on account of such Class 4 Deficiency Claim until such time as all Allowed General Unsecured Claims other than the Deficiency Claim of the Prepetition Lenders in Class 4 have received payment in full pursuant to Section 5.4.1 hereof.

**5.4.3 No Duplicate Claims.** Solely for the limited purposes of voting and Distribution, all Debtors are grouped together. Any duplicate claims shall be deemed expunged and only one claim shall be an Allowed Claim in their Class without any further objection being filed.

#### **5.5 Treatment of Class 5 – Interests.**

Class 5 shall consist of the Holders of Interests in the Debtors. The Holders of Interests in the Debtors will receive no Distribution on account of their Interests and such Interests shall be deemed cancelled as of the Effective Date. Any Holder of Interest that has not delivered by the Voting Deadline a Release Opt Out Form in accordance with the procedures set forth in the

Disclosure Statement Order shall be a Released Party and, as such, shall receive the releases set forth in Section 10.2 of the Plan.

## **ARTICLE 6**

### **CONDITIONS TO OCCURRENCE OF THE EFFECTIVE DATE**

#### **6.1 Conditions Precedent to Occurrence of the Effective Date.**

The following are conditions precedent to the occurrence of the Effective Date:

**6.1.1** The transactions contemplated by the PSA and the Sale Order shall have been effectuated;

**6.1.2** The Confirmation Order shall have been entered and become a Final Order in form and substance satisfactory to the Debtors and the Prepetition Secured Parties;

**6.1.3** The Plan Documents (including the Plan Supplement) necessary or appropriate to implement the Plan shall have been executed and delivered; and

**6.1.4** All governmental and third-party approvals and consents necessary in connection with the transactions contemplated by the Plan, including Bankruptcy Court approval, shall have been obtained, not subject to unfilled conditions, and be in full force and effect.

The Debtors may, with the consent of the Prepetition Secured Parties, waive one or more of the conditions to the occurrence of the Effective Date, without notice to any other parties in interest or hearing before the Bankruptcy Court.

#### **6.2 Notice of Occurrence of Effective Date.**

No later than three (3) Business Days after the day selected by the Debtors to be the Effective Date, the Debtors shall File a notice with the Bankruptcy Court announcing the occurrence of the Effective Date.

## **ARTICLE 7**

### **MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN**

#### **7.1 Post-Effective Date Governance.**

On the Effective Date, automatically and without further action, (a) any and all remaining officers or directors or managing partners of the Debtors shall be deemed to have resigned or withdrawn; and (b) the Plan Administrator shall have all right and authority necessary, as an officer or a representative of the Debtors and pursuant to the authority given to the Plan Administrator in this Plan, to wind up the Debtors.

## 7.2 Continuing Existence; Vesting of Assets.

**7.2.1** Except as otherwise specifically provided in the Plan, upon the Effective Date, all Remaining Assets shall remain with the Liquidating Debtors to be administered and liquidated by the Plan Administrator pursuant to the terms of the Plan. Upon the occurrence of the Effective Date, except as otherwise specifically provided in the Plan, pursuant to Section 1141(b), all Remaining Assets of the Estates shall vest in the Liquidating Debtors free and clear of all Claims, Liens, encumbrances, and other Interests, subject only to the Liens of the Prepetition Secured Parties; provided that such Remaining Assets shall remain subject to the Liens of the Prepetition Secured Parties until the Allowed Prepetition Credit Agreement Secured Claims are satisfied in full.

**7.2.2** Upon the Effective Date, the Debtors shall thereafter be referred to as the Liquidating Debtors and the Estates shall be referred to as the Liquidating Estates. From the Effective Date, the Liquidating Debtors shall continue in existence, to the extent necessary, for the purpose of facilitating the efforts of the Plan Administrator, including, but not limited to, the following: (a) wind up the remaining affairs of the Liquidating Debtors; (b) liquidate, by conversion to Cash or other methods, any Remaining Assets of the Liquidating Estates as expeditiously as reasonably possible; (c) enforce and prosecute claims, interests, rights, and privileges of the Liquidating Debtors; (d) resolve Disputed Claims; (e) administer the Plan, including distributing all Cash to Holders of Allowed Claims in accordance with the Plan; and (f) file appropriate tax returns, if any.

**7.2.3** On the Effective Date, the Amended Organizational Documents of the Debtors shall be deemed amended and restated as necessary to satisfy the provisions of the Plan and the Bankruptcy Code, and shall be deemed amended to, among other things: (i) provide, pursuant to Section 1123(a)(6) of the Bankruptcy Code, a prohibition against the issuance of nonvoting equity securities, and (ii) limit the activities of the Liquidating Debtors to matters related to the implementation of the Plan. Any amendment or modification to the Amended Organizational Documents following the Confirmation Date, to the extent such modification or amendment changes the fundamental purpose of the entities, (x) must be pursuant to authority granted by order of the Bankruptcy Court and (y) no equity holder vote shall be required.

**7.2.4** Unless otherwise set forth in the Plan, upon the date the Final Decree is entered by the Bankruptcy Court and the making of any Distributions payable under the Plan as of the closing of the Bankruptcy Cases, the Liquidating Debtors shall be deemed dissolved for all purposes without the necessity for any further actions to be taken by or on behalf of the Liquidating Debtors or payments to be made in connection therewith; *provided, however,* that the Plan Administrator shall file with the appropriate state authority a certificate of cancellation. From and after the Effective Date, the Liquidating Debtors shall not be required to file any document, or take any other action, to withdraw their business operation from any state in which the Liquidating Debtors were previously conducting their business operations.

### **7.3 The Plan Administrator.**

**7.3.1** The initial Plan Administrator shall be Gary Barton of Alvarez & Marsal. The Plan Administrator shall be deemed appointed upon entry of the Confirmation Order without further motion, application, notice, hearing, or other order of the Bankruptcy Court.

**7.3.2** On and after the Effective Date, the Plan will be administered by the Plan Administrator on behalf of the Liquidating Debtors and all actions taken thereunder in the name of the Liquidating Debtors shall be taken through the Plan Administrator.

**7.3.3** On and after the Effective Date, the Plan Administrator shall begin acting for the Liquidating Debtors in the same fiduciary capacity as applicable to the Debtors' existing board of directors.

**7.3.4** After the Effective Date, the Plan and all Remaining Assets of the Liquidating Estates shall be managed under the direction of the Plan Administrator as provided by the terms of the Plan. In the performance of the Plan Administrator's duties hereunder, the Plan Administrator shall have the rights and powers of a debtor in possession under Section 1107 of the Bankruptcy Code, and such other rights, powers, and duties incident to causing performance of the obligations under the Plan or otherwise as may be reasonably necessary, including, without limitation, the filing of any necessary tax returns.

**7.3.5** The Confirmation Order shall provide the Plan Administrator with express authority to convey, transfer, and assign any and all property of the Liquidating Estates consistent with the terms of the Plan and the Plan Administration Agreement and to take all actions necessary to effectuate same; *provided* that any such conveyance, transfer or assignment shall require the consent of the Prepetition Secured Parties.

**7.3.6** The Plan Administrator shall have sole responsibility for making Distributions under the Plan. Because they were sold to the Purchaser under the PSA, there are no Causes of Action (including Chapter 5 Causes of Action) on behalf of the Liquidating Debtors and their Estates that are the property of the Debtors. The Plan Administrator shall have standing to monitor and seek to enforce the performance of obligations under the Plan and the performance of other provisions of the Plan. The Plan Administrator shall use reasonable best efforts to promptly liquidate the Assets of the Liquidating Estates as soon as practicable at minimal cost and to distribute the proceeds thereof as soon as practicable pursuant to this Plan.

**7.3.7** The Plan Administrator may not compromise and settle objections to Claims that exceed \$500,000 without the consent of the Prepetition Secured Parties and an order of the Bankruptcy Court after opportunity for notice and a hearing.

**7.3.8** The Bankruptcy Court shall retain jurisdiction to hear objections to the Plan Administrator's fees and expenses; *provided, however*, that the Plan Administrator and any professionals retained by the Plan Administrator shall not be required to file any applications for compensation with the Bankruptcy Court. The Plan Administrator shall,

with the consent of the Prepetition Secured Parties, employ on behalf of himself, the Liquidating Debtors, and the Liquidating Estates, without Court order, professional persons, as such term is used in the Bankruptcy Code, to assist the Plan Administrator to carry out his duties under the Plan. Except as otherwise provided herein, the Plan Administrator and his professionals shall be entitled to receive compensation to be paid by the Liquidating Debtors (a) first, from the Wind Down Amount, and (b) thereafter, from the Remaining Assets of the Liquidating Estates, as set forth in the Plan Administrator Agreement. The Plan Administrator and his professionals shall be compensated at their respective standard hourly rates for time spent administering the implementation of the Plan and the resolution of objections to Claims, if any are asserted, without further motion or application to the Bankruptcy Court, subject until such time as the Prepetition Credit Agreement Secured Claims are paid in full, to review and approval of the Prepetition Agent.

**7.3.9** The Plan Administrator shall not be required to provide any bond or surety or other security for the performance of their duties unless otherwise ordered by the Bankruptcy Court. If otherwise so ordered, all costs and expenses of procuring any such bond shall be paid by the Liquidating Debtors.

#### **7.4 Exculpation of Plan Administrator.**

From and after the Effective Date, the Plan Administrator and his representatives shall not have or incur any liability to any Entity, including any Holder of a Claim or Interest, for any act taken or omission made in good faith in connection with or related to their performance of the duties conferred upon him by the Plan and any orders of the Bankruptcy Court, except to the extent an act constitutes gross negligence, willful misconduct or fraud. The Plan Administrator shall be deemed a judicial officer for purposes of immunity from civil action. No Holder of a Claim or Interest or representative thereof shall have or pursue any Cause of Action against the Plan Administrator or his representatives for taking any action in accordance with the Plan, to implement the provisions of the Plan or any order of the Bankruptcy Court. In all respects the Plan Administrator and his representatives shall be entitled to rely upon the advice of counsel with respect to his duties and responsibilities under the Plan; provided, however, that the foregoing exculpation shall not apply to any act of gross negligence, willful misconduct or fraud.

#### **7.5 Wind Down Amount.**

The source of all payments and Distributions under this Plan will be from the Net Distributable Assets and the Wind Down Amount and shall be subject to the Wind Down Budget, including amounts budgeted for May 2019, as needed to fund administrative expenses through May 2019. Following the Effective Date, the Plan Administrator will use the Wind Down Amount for the purpose of administering and winding down these Bankruptcy Cases in accordance with the Wind Down Budget. The Plan Administrator may, in the ordinary course of business and without the necessity for any application to, or approval of, the Bankruptcy Court, pay any accrued but unpaid Plan Expenses in accordance with the Wind Down Budget. All Plan Expenses shall be charged against and paid from the Wind Down Amount. Upon satisfaction of all valid Plan Expenses and Allowed Administrative Expense Claims, Allowed Professional Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims and Allowed General

Unsecured Claims (each in accordance with the Wind Down Budget) and entry by the Bankruptcy Court of the Final Decree, any remaining balance of the Wind Down Amount and the Net Distributable Assets shall be distributed by the Plan Administrator to the Prepetition Secured Parties in accordance with this Plan as soon as practicable thereafter.

**7.6 Plan Administrator Indemnification.**

The Liquidating Debtors shall, to the fullest extent permitted by applicable law, indemnify and hold harmless each Indemnified Party, from and against any and all liabilities, losses, damages, claims, costs, and expenses, including, but not limited to, attorneys' fees and costs, arising out of or due to its actions or omissions with respect to the implementation or administration of the Plan, if the Indemnified Party acted in good faith and in a reasonable manner.

**7.7 Resignation, Replacement, or Termination of Plan Administrator.**

From and after the Effective Date the Plan Administrator or his successor shall continue to serve in his capacity as the sole officer, director, and responsible person of the Liquidating Debtors through the earlier of (a) the date the Liquidating Debtors are dissolved in accordance with the Plan; (b) the date the Final Decree is entered by the Bankruptcy Court; and (c) the date the Plan Administrator resigns, is terminated, or is unable to serve. In the event that the Plan Administrator resigns, is terminated or is unable to serve, a successor shall be appointed by the Prepetition Secured Parties.

**7.8 Effectiveness of Securities, Instruments, and Agreements.**

On the Effective Date, the Plan Administrator, on behalf of the Liquidating Debtors, shall be authorized to take all actions necessary to execute and deliver all Plan Documents issued or entered into pursuant to the Plan, including, without limitation, any agreement entered into or instrument issued or in connection with any of the foregoing or any other Plan Document.

**7.9 Approval of Agreements.**

The Confirmation Notice and the solicitation of votes on the Plan shall be deemed a solicitation for the approval of all transactions contemplated by the Plan. Entry of the Confirmation Order shall constitute approval of such transactions and authorization for the Plan Administrator and the Debtors, as appropriate, to execute and deliver any Plan Documents required thereby.

**7.10 Further Transactions.**

On the Effective Date, the Plan Administrator and the Liquidating Debtors, as applicable, shall execute and deliver any Plan Documents necessary to effectuate and further evidence the terms and conditions of the Plan.

### **7.11 Ultimate Dissolution of the Debtors; Entry of Final Decree.**

As soon as practicable after the Effective Date, the Liquidating Debtors shall be dissolved for all purposes by the Plan Administrator without the necessity for any other or further actions to be taken by or on behalf of the Liquidating Debtors or payments to be made in connection therewith; *provided, however*, without the need of any further approval, the Plan Administrator in his discretion shall execute and file documents and take all other actions as he deems appropriate relating to the dissolution of the Liquidating Debtors under the laws of Delaware and/or any other applicable states, and in such event, all applicable regulatory and governmental agencies shall take all steps necessary to allow and effect the prompt dissolution of the Liquidating Debtors as provided herein, without the payment of any fee, tax, or charge and without need for the filing of reports or certificates.

As soon as is practicable after the Effective Date, the Plan Administrator shall File a motion with the Clerk of the Bankruptcy Court requesting the entry of a Final Decree closing the Bankruptcy Cases; *provided, however*, the Plan Administrator shall not File a motion for Final Decree until and unless the conditions to the Plan becoming effective as set forth herein have been fully met, and objections to Disputed Claims have been resolved by Final Order of the Bankruptcy Court.

## **ARTICLE 8**

### **DISPUTED CLAIMS, DISPUTED INTERESTS, AND MISCELLANEOUS DISTRIBUTION PROVISIONS**

#### **8.1 Objections.**

An objection to the allowance of a Claim (other than an Administrative Expense Claim) or Interest shall be in writing and may be Filed only by the Plan Administrator, on behalf of the Liquidating Debtors, at any time on or before the Claims Objection Deadline; *provided, however*, that nothing herein shall prevent a party in interest from objecting to Claims at its own expense. The Plan Administrator, on behalf of the Liquidating Debtors, will prosecute any such objection until determined by a Final Order unless the Plan Administrator (a) compromises and settles such objection to a Claim or Interest by written stipulation subject to Court approval, if necessary, or (b) withdraws such objection. The Plan Administrator shall have the authority to settle or compromise any Claim involving a dispute of \$500,000 or less regarding the Allowed Claim amount of any Claim, subject to approval and consent of the Prepetition Secured Parties.

#### **8.2 Amendments to Claims; Claims Filed After the Confirmation Date.**

Except as otherwise provided in the Plan, after the Confirmation Date, a Claim may not be Filed or amended without the authorization of the Bankruptcy Court. Except as otherwise provided in the Plan, any new or amended Claim Filed after the Confirmation Date shall be deemed a Disallowed Claim in full and expunged without any action by the Debtors or the Plan Administrator.

### **8.3 Distributions.**

The Plan Administrator shall make Distributions to the Holders of Allowed Claims on the terms set forth herein.

### **8.4 Distributions on Account of Disputed Claims.**

No Distributions will be made on a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim. In determining the amount of Distributions to be made under the Plan to the Holders of Allowed Claims on the Effective Date or a Distribution Date, the appropriate Distributions shall be made as if all the Disputed Claims as of such Distribution Date were Allowed Claims in the full amount claimed by the Holders thereof, unless otherwise ordered or estimated by the Bankruptcy Court.

### **8.5 Undeliverable or Unclaimed Distributions.**

**8.5.1** If a check issued by the Plan Administrator for a Distribution under the Plan is not cashed within sixty (60) days after issuance, at the discretion of the Plan Administrator, a stop payment order may be given with respect to the check and at the election of the Plan Administrator, no further Distribution shall be made to such Holder on account of such Allowed Claim. Such Allowed Claim shall be expunged, discharged and forever barred from assertion against the Liquidating Debtors or the Liquidating Estates.

**8.5.2** If the Distribution to any Holder of an Allowed Claim is returned to the Plan Administrator as undeliverable, no further Distribution will be made to such Holder unless and until the Plan Administrator is notified in writing of such Holder's current address; *provided, however*, that the Plan Administrator shall make reasonable efforts to contact the Holder of such Allowed Claim, identify the correct mailing address, and resend the Distribution. All requests for the resend of a Distribution that is returned as undeliverable must be made before sixty (60) days after the date the first Distribution was made which was returned as undeliverable. After such sixty (60) days, the Allowed Claim of such Holder shall be expunged, discharged and forever barred notwithstanding any federal or state escheatment laws to the contrary.

**8.5.3** No Distribution of less than \$25.00 shall be made by the Plan Administrator.

### **8.6 Allocation of Consideration.**

The aggregate consideration to be distributed to a Holder of an Allowed Claim under the Plan shall be treated as first satisfying an amount equal to the stated principal amount of such Allowed Claim and any remaining consideration as satisfying accrued but unpaid interest, if any, thereon.

## **8.7 Transmittal of Distributions and Notices.**

**8.7.1** Any property or notice other than Cash Distributions made through this Plan in forms other than a check which an Entity is or becomes entitled to receive pursuant to the Plan shall be delivered by regular mail, postage prepaid, in an envelope addressed to that Entity at the address indicated on any notice of appearance Filed by that Entity or their authorized agent prior to the Effective Date. If no notice of appearance has been Filed, notice shall be sent to the address indicated on a properly Filed proof of Claim or, absent such a proof of Claim, the address that is listed on the Schedules for that Entity. The date of Distribution shall be the date of mailing, and property distributed in accordance with this section shall be deemed delivered to such Entity regardless of whether such property is actually received by that Entity.

**8.7.2** A Holder of a Claim or Interest may designate a different address for notices and Distributions by notifying the Debtors or, following the Effective Date, the Plan Administrator, of that address in writing. The new address shall be effective upon receipt by the Debtors or Plan Administrator, as the case may be.

## **8.8 Method of Cash Distributions.**

Any Cash payment to be made pursuant to the Plan may be made, at the option of the Plan Administrator, by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law.

## **8.9 Distributions on Non-Business Days.**

Any Distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

## **8.10 Withholding Taxes.**

Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from Distributions hereunder. The Plan Administrator shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. All amounts properly withheld from a Cash Distribution to a Holder of an Allowed Claim shall be treated as part of the Distribution to such Holder. All Holders of an Allowed Claim shall be required to provide any information necessary to effect information reporting and withholding of such taxes. Each Holder of an Allowed Claim that is to receive a Distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such Distribution. If a request is made by the Plan Administrator to the Holder of an Allowed Claim to complete forms related to withholding taxes and the Holder of such Allowed Claim fails to comply with the request within sixty (60) days, such Allowed Claim shall be expunged, discharged and forever barred from assertion against the Liquidating Debtors or the Liquidating Estates.

**8.11 Setoffs.**

Except as otherwise provided in the Plan, agreements entered into in connection with the Plan, the Confirmation Order, or in agreements previously approved by Final Order of the Bankruptcy Court, the Debtors or the Plan Administrator may, but will not be required to, setoff against any Claim and the Distributions made with respect to the Claim, before any Distribution is made on account of such Claim, any and all of the claims, rights, and other Causes of Action of any nature that a Debtor may hold against the Holder of such Claim; *provided, however*, that neither the failure to effect such a setoff, the allowance of any Claim hereunder, any other action or omission of a Debtor, nor any provision of the Plan, shall constitute a waiver or release by such Debtor of any such claims, rights, and other Causes of Action that such Debtor may possess against such Holder. To the extent a Debtor fails to set off against a Holder of a Claim or Interest and the Plan Administrator seeks to collect a claim from the Holder of such Claim or Interest after a Distribution to the Holder of such Claim or Interest pursuant to the Plan, the Plan Administrator shall be entitled to full recovery on its claim, if any, against the Holder of such Claim or Interest.

**8.12 Charitable Gift.**

If at any time the Plan Administrator determines that the expense of administering the assets of the Liquidating Estates so as to make a final Distribution on Allowed Claims is likely to exceed the value of the Remaining Assets in the Liquidating Estates, or the amount of Cash is not sufficient for a pro rata Distribution to the Holders of Allowed Claims, the Plan Administrator shall have the authority to (i) reserve any amounts necessary to close the Bankruptcy Cases, (ii) donate any balance to a non-denominational charitable organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code that is unrelated to the Plan Administrator, with preference given to the charitable foundation maintained by the American College of Bankruptcy or the American Bankruptcy Institute, and (iii) close the Bankruptcy Cases in accordance with the Bankruptcy Code or Bankruptcy Rules.

**8.13 Postpetition Interest on Claims.**

Except as may be otherwise expressly provided herein, including in Section 4.2, postpetition interest shall not accrue or be paid on any Claims against the Debtors, and no holder of any such Claim against the Debtors shall be entitled to payment or Distributions on account of interest accruing on or after the Petition Date.

**ARTICLE 9****EXECUTORY CONTRACTS AND UNEXPIRED LEASES****9.1 Assumption and Rejection of Executory Contracts Under the Plan.**

Only Executory Contracts specified as assumed by the Debtors and assigned to the Purchaser, including under the Sale Order, and any other Bankruptcy Court Order authorizing the assumption and assignment of Executory Contracts, shall be deemed assumed or assumed and assigned.

## **9.2 Deemed Rejection.**

All Executory Contracts that were not assumed pursuant to a Final Order of the Bankruptcy Court during the Bankruptcy Cases, including under the Sale Order, are deemed rejected as of the Effective Date.

## **9.3 Approval of Rejection.**

Entry of the Confirmation Order shall constitute the approval, pursuant to Section 365(a) of the Bankruptcy Code, of the rejection of the Executory Contracts rejected pursuant to the Plan or otherwise during the Bankruptcy Cases.

## **9.4 Rejection of Executory Contracts Non-Waiver.**

Nothing in the Plan shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, Claims, Causes of Action, or other rights of the Debtors under any executory or non-executory contract or any unexpired or expired lease, nor shall any provision of the Plan, increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtors under any executory or non-executory contract or any unexpired or expired lease.

## **9.5 Rejection Claim Bar Date.**

If the rejection of an executory contract or unexpired lease pursuant to this Plan gives rise to a Rejection Claim by the other party or parties to such contract or lease, such Rejection Claim, to the extent that it is timely Filed, shall be classified as a General Unsecured Claim; *provided, however,* any Rejection Claim arising from the rejection of an executory contract or unexpired lease shall be forever barred and shall not be enforceable against the Debtors, the Estates, or after the Effective Date, the Liquidating Debtors and the Liquidating Estates, unless a proof of Rejection Claim is Filed and served on the Debtors or the Plan Administrator, as applicable, by the Rejection Claim Bar Date. The Plan Administrator shall file any objection to a Rejection Claim on or before the Claims Objection Deadline.

## **9.6 Indemnification Obligations.**

Any obligation of the Debtors to indemnify, reimburse, or limit the liability of any Person, including, but not limited to any officer or director of Debtors, or any agent, professional, financial advisor, or underwriter of any securities issued by the Debtors, relating to any acts or omissions occurring before the Petition Date, whether arising pursuant to charter, by-laws, contract or applicable state law, shall be deemed to be, and shall be treated as, an Executory Contract and (i) shall be deemed to be rejected, canceled, and discharged pursuant to the Plan as of the Effective Date and (ii) any and all Claims resulting from such obligations are disallowed under Bankruptcy Code Section 502(e). The rejection shall not act to prevent any covered person under any applicable insurance to remain covered for all acts whether pre- or post-petition with regard to the Debtors.

## ARTICLE 10

### RELEASES UNDER COMPROMISE; PLAN INJUNCTION; EXCULPATION

#### 10.1 Compromise and Release of All Claims.

The Plan comprises a compromise and release of all claims, if any and if not otherwise sold pursuant to the Sale, by the Debtors as against the following persons, in exchange for which each shall provide the consideration, benefits and services as provided under the Plan: (I) Riverstone and its officers, directors, employees, partners and affiliates; (ii) Debtors' board of directors and officers; and (iii) any person holding a Claim or Interest and subject to the provisions of Section 10.2.

#### 10.2 Releases to the Debtors and Others.

**10.2.1 Release of the Debtors, the Debtors' Management, and the Debtors' Present and Former Board Members.** Except as otherwise specifically provided by the Plan, the Distributions and rights that are provided in the Plan shall be in complete satisfaction and release, effective as of the Confirmation Date, but subject to the occurrence of the Effective Date, of (a) all Claims and Causes of Action against, liabilities of, Liens on, obligations of and Interests in, the Debtors, the Debtors' management and the Debtors' present and former board members and the Assets and properties of the Debtors, whether known or unknown; and (b) all Causes of Action (whether known or unknown, either directly or derivatively through the Debtors) against, Claims (as defined in Section 101 of the Bankruptcy Code) against, liabilities (as guarantor of a Claim or otherwise) of, Liens on the direct or indirect Assets and properties of, and obligations of successors and assigns of, the Debtors and their successors and assigns based on the same subject matter as any Claim or Interest or based on any act or omission, transaction, or other activity or security, instrument, or other agreement of any kind or nature occurring, arising, or existing prior to the Effective Date that was or could have been the subject of any Claim or Interest, in each case regardless of whether a proof of Claim or Interest was Filed, whether or not Allowed and whether or not the Holder of the Claim or Interest has voted on the Plan.

**10.2.2 Releases by the Debtors.** Effective as of the Confirmation Date, but subject to the occurrence of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors, in their own capacity and as debtors in possession, the Liquidating Debtors, and their Estates, in each case on behalf of themselves and their Related Parties, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, shall be deemed to have forever released unconditionally, waived and discharged, and hereby is deemed to release unconditionally, waive, and discharge on such date the Released Parties from any and all obligations, rights, suits, damages, remedies, Causes of Action (including any derivative claims asserted or that could have been asserted on behalf of a Debtor, a Liquidating Debtor, or any Estate) and liabilities whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown,

foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on, relating to, or in any manner arising from, in whole or in part upon, directly or indirectly, in any manner whatsoever, the Debtors, the Debtors' Estates, the Debtors' affiliates, the Bankruptcy Cases, the Sale, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated under the Plan, the business or contractual arrangements between the Debtors and any Released Party, the restructuring of the Claims or Interests before or during the Bankruptcy Cases, the negotiation, formulation, consummation or preparation of the Prepetition Loan Documents, the DIP Loan Documents or other indebtedness for money borrowed by the Debtors, the Plan (including any Plan Document and any Plan Supplement), the Disclosure Statement, the Sale Order, the PSA, or any related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan, the pursuit of approval of the Disclosure Statement or confirmation of the Plan, or the pursuit of Consummation of the Plan, in each case related to any act or omission, transaction, event, or other occurrence, taking place on or prior to the Effective Date. Notwithstanding the foregoing release, no Released Party shall be released from acts or omissions which are the result of willful misconduct or fraud or from any obligations under the Plan or any document, instrument, or agreement executed to implement the Plan.

**10.2.3 Release by Holders of Claims and Interests.** As of the Effective Date, each Releasing Party is deemed to have released and discharged the Debtors, the Liquidating Debtors, each Released Party, and each of the foregoing Persons' Related Parties from any and all obligations, rights, suits, damages, remedies, and Causes of Action (including any derivative claims asserted or that could have been asserted on behalf of a Debtor, a Liquidating Debtor, or any Estate), whether known or unknown, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, any act or omission, transaction, event, or other occurrence, taking place on or prior to the Effective Date in any way relating to, or in any manner arising from, in whole or in part, directly or indirectly, in any manner whatsoever, the Debtors, the Debtors' Estates, the Debtors' affiliates, the Bankruptcy Cases, the Sale, intercompany transactions, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated under the Plan, the business or contractual arrangements between the Debtors and any Released Party, the restructuring of the Claims or Interests before or in the Bankruptcy Cases, the negotiation, formulation, consummation or preparation of the Prepetition Loan Documents, the DIP Loan Documents or other indebtedness for money borrowed by the Debtors, the Plan (including any Plan Document and any Plan Supplement), the Disclosure Statement, the Sale Order, the PSA, or any related agreement, instrument, or other document, or the solicitation of votes with respect to the Plan, the pursuit of approval of the Disclosure Statement or confirmation of the Plan, or the pursuit of Consummation of the Plan, in each case related to any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date. Notwithstanding the foregoing release, no Released Party shall be released from acts or omissions which are the result of

**willful misconduct or fraud or from any obligations under the Plan or any document, instrument, or agreement executed to implement the Plan.**

**10.2.4 Release Integral to Plan.** The foregoing release provisions are an integral part of the Plan and are essential to its implementation. If and to the extent that the Bankruptcy Court concludes that the Plan cannot be confirmed with any portion of the foregoing releases, the Debtors reserve the right to amend the Plan so as to give effect as much as possible to the foregoing releases.

For the avoidance of doubt, notwithstanding Section 10.2 of the Plan, the releases herein shall not include a release, waiver or discharge of Causes of Action transferred to the Purchaser under the PSA.

### **10.3 Injunction.**

**10.3.1** Except as otherwise provided in the Plan, the Confirmation Order shall provide, among other things, that all Persons and Entities who have held, hold, or may hold Claims against or Interests in the Debtors, with respect to any such Claims or Interests which relate in whole or in part to any property, actions, or inactions of any of the Debtors, are permanently enjoined from and after the Confirmation Date from: (a) commencing, conducting, or continuing in any manner, directly, or indirectly, any suit, action, or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative, or other forum) against or affecting the Debtors, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor-in-interest to, the Debtors, or any property of any such transferee or successor; (b) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, of any judgment, award, decree, or order against the Debtors, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Debtors, or any property of any such transferee or successor; (c) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors, any of their property, or any direct or indirect transferee of any property of, or successor-in-interest to, any of the foregoing Entities; and (d) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

**10.3.2** Furthermore, except as otherwise expressly provided in the Plan, for the consideration described in the Plan, as of the Effective Date, all Persons and Entities who have held, hold, or may hold claims released pursuant to Article 10 of the Plan, whether known or unknown, and their respective agents, attorneys, and all others acting for or on their behalf, shall be permanently enjoined on and after the Effective Date, with respect to any claim released pursuant to Article 10 of the Plan, from (a) commencing or continuing in any manner, any action or other proceeding of any kind with respect to any claim against them or the property of any of them; (b) seeking the enforcement, attachment, collection, or recovery by any manner or

means of any judgment, award, decree, or order against any Debtor or the property of the Debtor; (c) creating, perfecting, or enforcing any encumbrance of any kind against any Debtor; and (d) taking any act, in any manner and in any place whatsoever, that does not conform to or comply with provisions of the Plan. In the event that any Person or Entity takes any action that is prohibited by, or is otherwise inconsistent with the provisions of Section 10.2.2 or Article 10 of the Plan, then, upon notice to the Bankruptcy Court, the action or proceeding in which the Claim of such Entity is asserted shall automatically be transferred to the Bankruptcy Court for enforcement of the provisions of Section 10.2.2 and Article 10 of the Plan.

**10.3.3** The Bankruptcy Court shall retain exclusive jurisdiction to interpret and enforce the provisions of Article 10 of the Plan, including, without limitation, to hear and determine any dispute as to whether any claim or Cause of Action asserted by any Person or Entity against any Debtor is subject to the provisions of Article 10.2 of the Plan.

#### **10.4 Exculpation.**

No Exculpated Parties shall have or incur any liability whatsoever to any Person or Entity for any act taken or omission made in good faith in connection with or related to preparing, formulating, negotiating, implementing, disseminating, implementing, confirming, or consummating the Plan, including any settlement referenced therein, the Prepetition Loan Documents, the DIP Loan Documents, the PSA, the Sale Order, the Disclosure Statement, or any Plan Document or Plan Supplement, or any related agreement, instrument, or other document. No Exculpated Party shall have any liability to the Debtors, any Creditor, Interest holder, any other party-in-interest in the Bankruptcy Cases or any other Entity for actions taken or not taken under the Plan, in connection herewith or with respect thereto, or arising out of their administration of the Plan or the property to be distributed under the Plan, in good faith, including, without limitation, failure to obtain Confirmation or to satisfy any condition or conditions, or refusal to waive any condition or conditions, to the occurrence of the Effective Date; *provided, however*, that the foregoing exculpation shall not apply to any act of willful misconduct or fraud.

### **ARTICLE 11**

#### **MISCELLANEOUS**

##### **11.1 Conflicts Between Plan and Confirmation Order.**

In the event the terms of this Plan and the Confirmation Order conflict, the terms of the Confirmation Order shall govern.

##### **11.2 Binding Effect.**

Upon Confirmation of the Plan and pursuant to Section 1141(a) of the Bankruptcy Code, the provisions of the Plan shall bind the Debtors and all Holders of Claims against or Interests in the Debtors, including their successor and assigns, whether or not they vote to accept the Plan.

The Distributions made under the Plan are in full and complete settlement of all Claims and Interests against the Debtors.

### **11.3 Term of Injunction or Stays.**

Unless otherwise provided herein, any injunction or stay imposed by operation of Sections 105 or 362 of the Bankruptcy Code shall remain in full force and effect until the Effective Date rather than the Confirmation Date. Nothing in this section, however, shall be construed as a limitation of the permanent injunctions provided for in this Plan.

### **11.4 Retention of Jurisdiction.**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court retains such jurisdiction over the Bankruptcy Cases after the Effective Date as is legally permissible including, without limitation, jurisdiction:

**11.4.1** To determine (a) any Disputed Claims, and all related Claims accruing after the Confirmation Date, including, but not limited to, rights and liabilities under contracts giving rise to such Claims; (b) the validity, extent, priority, and non-avoidability of consensual and nonconsensual Liens and other encumbrances; (c) pre-Confirmation tax liability pursuant to Section 505 of the Bankruptcy Code; and (d) controversies and disputes regarding the interpretation of the Plan and documents executed in connection therewith;

**11.4.2** To allow, disallow, estimate, liquidate, or determine any Claim or Interest against the Debtors and to enter or enforce any order requiring the Filing of any such Claim or Interest before a particular date;

**11.4.3** To approve all matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease of the Debtors pursuant to Section 365 of the Bankruptcy Code and the terms of the Plan;

**11.4.4** To determine any request for payment of an Administrative Expense Claim;

**11.4.5** To determine the allowance and payment of any Professional Claim;

**11.4.6** To resolve controversies and disputes regarding the interpretation and implementation of the Plan, any disputes relating to whether or not a timely and proper proof of Claim or Interest was Filed, or whether a Disallowed Claim should be reinstated;

**11.4.7** To implement the provisions of the Plan and entry of orders in aid of Confirmation and Consummation of the Plan, including, but not limited to, any disputes concerning the enforceability or applicability of the releases and injunctions contained herein;

**11.4.8** To modify the Plan pursuant to Section 1127 of the Bankruptcy Code;

**11.4.9** To adjudicate any and all Causes of Action that arose in the Bankruptcy Cases prior to the Confirmation Date or in connection with the implementation of the Plan, whether or not pending on the Confirmation Date, including, but not limited to, any remands of appeals;

**11.4.10** To resolve any disputes concerning whether a person or entity had sufficient notice of the Bankruptcy Cases, the applicable bar dates, the hearing on the approval of the Disclosure Statement as containing adequate information, or the Confirmation Hearing for the purpose of determining whether a Claim or Interest is discharged hereunder or for any other purpose;

**11.4.11** To determine any and all applications, Claims, Interests, pending adversary proceedings, and contested matters (including, without limitation, any adversary proceeding or other proceeding to recharacterize agreements or reclassify Claims or Interests) in the Bankruptcy Cases;

**11.4.12** To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

**11.4.13** To seek the issuance of such orders in aid of execution of the Plan, to the extent authorized by Section 1142 of the Bankruptcy Code;

**11.4.14** To consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, but not limited to, the Confirmation Order;

**11.4.15** To recover all Assets of the Debtors and property of the Estates, wherever located, including any Cause of Action under Sections 544 through 551 of the Bankruptcy Code;

**11.4.16** To resolve any dispute relating to the approval and payment of the fees and expenses of the Plan Administrator, or their Professionals;

**11.4.17** To resolve matters concerning state, local, and federal taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code;

**11.4.18** To hear any other matter not inconsistent with the Bankruptcy Code;

**11.4.19** To resolve any and all disputes or controversies relating to Distributions to be made, and/or reserves or escrows to be established, under the Plan;

**11.4.20** To enter the Final Decree closing the Bankruptcy Cases;

**11.4.21** To appoint a successor Plan Administrator;

**11.4.22** To enforce the injunctions granted under the Plan; and

**11.4.23** To approve settlements relating to the above.

### **11.5 Defects, Omissions and Amendment of the Plan.**

The Debtors may, with the consent of the Prepetition Secured Parties and with the approval of the Bankruptcy Court and without notice to Holders of Claims, insofar as it does not materially and adversely affect Holders of Claims, correct any defect, omission, or inconsistency in the Plan in such a manner and to such extent necessary or desirable to expedite the execution of the Plan. The Debtors may, with the consent of the Prepetition Secured Parties, propose amendments or alterations to the Plan before the Confirmation Hearing as provided in Bankruptcy Code Section 1127 if, in the opinion of the Bankruptcy Court, the modification does not materially and adversely affect the interests of Holders of Claims, so long as the Plan, as modified, complies with Bankruptcy Code Sections 1122 and 1123 and the Debtors have complied with Bankruptcy Code Section 1125. The Debtors may, with the consent of the Prepetition Secured Parties and the Plan Administrator, propose amendments or alterations to the Plan after the Confirmation Date but prior to substantial Consummation, in a manner that, in the opinion of the Bankruptcy Court, does not materially and adversely affect Holders of Claims, so long as the Plan, as modified, complies with Bankruptcy Code Sections 1122 and 1123, the Debtors have complied with Bankruptcy Code Section 1125, and after notice and a hearing, the Bankruptcy Court confirms such Plan, as modified, under Bankruptcy Code Section 1129.

### **11.6 Successors and Assigns.**

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

### **11.7 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 subsection (8) thereof, the Debtors 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 as to the Debtors' Creditors and does not discriminate unfairly with respect to any Impaired Class of Claims against the Debtors that does not vote to accept the Plan as described in the Disclosure Statement. The Debtors reserve the right to alter the treatment of any Class to effectuate a cram down under Section 1129(b) of the Bankruptcy Code.

### **11.8 Modification of the Plan.**

The Debtors reserve the right, in accordance with the Bankruptcy Code, to amend or modify this Plan prior to the Confirmation Date. After the Confirmation Date, the Debtors may, with the consent of the Prepetition Secured Parties, upon order of the Bankruptcy Court, amend or modify this Plan in accordance with Section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purposes and intent of this Plan. Further, because the Debtors have separate voting Classes, the Debtors reserve the right to file a new Plan, convert one or both of the Bankruptcy Cases to a case under chapter 7, and/or take such other actions as they deem appropriate.

**11.9 Withdrawal or Revocation of the Plan.**

The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan, after obtaining the consent of the Prepetition Secured Parties, or if the Effective Date does not occur, the Plan shall be of no further force or effect.

**11.10 Notices.**

All notices, requests, elections, or demands in connection with the Plan shall be in writing and shall be deemed to have been given when received or, if mailed, five (5) days after the date of mailing provided such writing shall have been sent by registered or certified mail, postage prepaid, return receipt requested, and sent to the following:

Counsel for the Debtors:

**HAYNES AND BOONE, LLP**  
Patrick L. Hughes  
Texas State Bar No. 10227300  
patrick.hughes@haynesboone.com  
Martha Wyrick  
Texas State Bar No. 24101606  
martha.wyrick@haynesboone.com  
1221 McKinney Street, Ste. 2100  
Houston, Texas 77010  
Telephone: (713) 547-2000  
Facsimile: (713) 547-2600

-AND-

**YOUNG CONAWAY STARGATT & TAYLOR, LLP**  
Edmon L. Morton  
Delaware State Bar No. 3856  
Kenneth J. Enos  
Delaware State Bar No. 4544  
Elizabeth S. Justison  
Delaware State Bar No. 5911  
1000 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

All notices and requests to Creditors and Interest Holders shall be sent to their last known addresses. The Debtors and any Creditors or Interest Holders, may designate in writing any other address for purposes of this section, which designation shall be effective upon receipt.

### **11.11 Governing Law.**

Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware.

### **11.12 Severability.**

Should any term or provision of the Plan be determined by the Bankruptcy Court to be invalid, void, or unenforceable, such determination shall in no way limit or affect the enforceability or operative effect of any other provision of the Plan. If any term or provision of the Plan is of such a character as to deny Confirmation, the Debtors reserve the right to strike such provisions from the Plan and seek Confirmation of the Plan as modified. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

### **11.13 All Claims.**

This Plan is intended to deal with all Claims against the Debtors of whatever character whether or not disputed, contingent, or liquidated and whether or not allowed by the Bankruptcy Court under Section 502 of the Bankruptcy Code. However, only those Claims Allowed under Section 502 of the Bankruptcy Code shall be entitled to receive the treatment or Distributions afforded by the Plan.

### **11.14 Preservation of Insurance.**

The Plan seeks to preserve to the fullest extent any and all insurance coverage applicable to any claims whether derivative or direct applicable to the Debtors or any person having beneficial rights in such insurance.

*[Signature Page to Follow]*

Dated: July 15, 2019

FAIRWAY ENERGY, LP, FAIRWAY  
ENERGY PARTNERS, LLC, AND  
FAIRWAY ENERGY GP, LLC

/s/ Robert M. Flavin

By: Robert M. Flavin

Title: Chief Financial Officer

Fairway Energy, LP

1000 Louisiana, Suite 1400

Houston, Texas 77002

Telephone: (713) 960-4740

EXHIBIT A

PLAN ADMINISTRATOR AGREEMENT

## **PLAN ADMINISTRATION AGREEMENT**

This PLAN ADMINISTRATION AGREEMENT, dated as of July \_\_\_\_, 2019, is between Fairway Energy, LP, Fairway Energy Partners, LLC, and Fairway Energy GP, LLC (collectively, the "Liquidating Debtors"), and Gary Barton, of Alvarez & Marsal North America, LLC ("Administrator" or "Plan Administrator").

### **RECITALS**

**WHEREAS**, on November 26, 2018, the Liquidating Debtors each filed with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") voluntary petitions for relief under chapter 11 of title 11, United States Code;

**WHEREAS**, by order dated [\_\_\_\_\_, 2019], the Bankruptcy Court confirmed the Joint Plan of Liquidation of the Debtors and Debtors in Possession Pursuant to Chapter 11 of the Bankruptcy Code, dated \_\_\_\_\_, 2019 (the "Plan");

**WHEREAS**, the Plan requires the execution of the Plan Administration Agreement (the "Agreement") in connection with the implementation of the Plan;

**WHEREAS**, upon the Effective Date of the Plan, the Liquidating Debtors desire to appoint the Administrator to serve as the Plan Administrator under the Plan, and the Administrator is willing to serve in such capacity, in each case upon the terms set forth the Plan and pursuant to the Plan;

**NOW, THEREFORE**, the parties hereby agree as follows:

1. **Definitions.** Capitalized terms shall have the respective meanings assigned to such terms in the Plan unless expressly defined herein.
2. **Appointment.** The Liquidating Debtors appointed the Administrator to serve as Plan Administrator under the Plan, and the Administrator hereby accepts such appointment and agrees to serve in such capacity in each case upon the Effective Date of the Plan.
3. **Responsibilities.** The responsibilities of the Plan Administrator shall include the following: (a) to wind up the remaining affairs of the Liquidating Debtors; (b) to distribute the Remaining Assets of the Liquidating Estates as expeditiously as reasonably possible; (c) to facilitate the dissolution of the Liquidating Debtors; (d) to resolve Disputed Claims; (e) administer the Plan, including distributing all Cash to Holders of Allowed Claims in accordance with the Plan; (f) to oversee the filing of final tax returns, if any; (g) to execute and deliver any Plan Documents necessary to effectuate and further evidence the terms and conditions of the Plan; (h) to file and obtain an order closing the Chapter 11 Cases as soon as practicable; and (i) such other responsibilities as may be vested in the Plan Administrator pursuant to the Plan or

Bankruptcy Court order that are necessary and proper to carry out the provisions of the Plan or this Agreement, including the retention, engagement and payment of any professionals which the Plan Administrator believes necessary in his business judgment.

4. **Powers.** After the Effective Date, the Plan and all remaining property of the Liquidating Estates shall be managed under the direction of the Plan Administrator as provided by the terms of the Plan. In the performance of his duties hereunder, the Plan Administrator shall have the rights and powers of a debtor in possession under Section 1107 of the Bankruptcy Code, and such other rights, powers, and duties incident to causing performance of the obligations under the Plan or otherwise as may be reasonably necessary.

The powers of the Plan Administrator shall, without Bankruptcy Court approval in each of the following cases, include: (i) the power to withdraw, make distributions, pay United States Trustee fees, and pay taxes and other obligations owed by the Liquidating Debtors from available Cash in accordance with the Plan, and the power to, with the consent of the Prepetition Secured Parties, engage employees and professional persons to assist the Plan Administrator with respect to his responsibilities; (ii) the power to convey, transfer, and assign any and all property of the Liquidating Estates consistent with the terms of the Plan and the Plan Administration Agreement and to take all actions necessary to effectuate same; *provided* that any such conveyance, transfer or assignment shall require the consent of the Prepetition Secured Parties; (iii) the power to compromise and settle Claims and Causes of Action on behalf of or against the Liquidating Debtors; (iv) the power to seek to enforce the performance of obligations under the Plan and the performance of other provisions of the Plan; and such other powers as may be vested in or assumed by the Plan Administrator pursuant to the Plan or Bankruptcy Court order or as may be necessary and proper to carry out the provisions of the Plan or this Agreement. Notwithstanding the foregoing, the Plan Administrator may not compromise or settle Claims and Causes of Action in an amount that exceeds \$500,000 without the consent of the Prepetition Secured Parties and an order of the Bankruptcy Court after opportunity for notice and a hearing. Professionals retained by the Plan Administrator may include, without limitation, the Plan Administrator's employer and/or its affiliates (the "PA Firm"). The Plan Administrator may, with the consent of the Prepetition Secured Parties, employ the PA Firm, its affiliates and personnel as professionals (rather than utilizing other similarly situated or available personnel or professional services firms) notwithstanding that (a) the Plan Administrator may benefit (directly or indirectly) from the compensation paid to the PA Firm and (b) other persons or entities may be available to provide the same or similar work at similar or more competitive prices. In no event shall the Plan Administrator, the PA Firm or their affiliates be subject to a claim of a conflict of interest or breach of fiduciary duty or any other claim arising as a result of the appointment of any such person in accordance with this provision.

5. **Ultimate Dissolution of the Debtors; Entry of Final Decree.** As soon as practicable after the Effective Date, the Liquidating Debtors shall be dissolved for all purposes by the Plan Administrator without the necessity for any other or further actions to be taken by or on behalf of the Liquidating Debtors or payments to be made in connection therewith; *provided*,

*however*, without the need of any further approval, the Plan Administrator in his discretion may execute and file documents and take all other actions as he deems appropriate relating to the dissolution of the Liquidating Debtors under the laws of Delaware and/or any other applicable states.

As soon as is practicable after the Effective Date, the Plan Administrator shall File an application with the Clerk of the Bankruptcy Court requesting the entry of a Final Decree closing the Bankruptcy Cases; *provided, however*, the Plan Administrator shall not File an application for Final Decree until and unless the conditions to the Plan becoming effective as set forth the Plan have been fully met, all pending Causes of Action have been resolved by Final Order of a court of competent jurisdiction or abandoned, and objections to Disputed Claims have been resolved by Final Order of the Bankruptcy Court.

7. **No Retention of Rights to Pursue Causes of Action.** As described in the Plan, as of the Effective Date, the Plan Administrator (as the representative of the Liquidating Estates) has no Causes of Action (including Chapter 5 Causes of Action) that otherwise belong to the Debtors and arose before the Effective Date, including all Causes of Action of a trustee and debtor in possession under the Bankruptcy Code.

8. **Compensation.** Except as the Prepetition Secured Parties and Plan Administrator may otherwise agree hereafter, the Plan Administrator shall be entitled to compensation in the form of a lodestar hourly fee for services performed, with his hourly rate set at \$875 per hour, plus reimbursement for actual, reasonable and necessary expenses incurred by the Plan Administrator, which amounts shall be paid by the Liquidating Debtors from the Wind-Down Amount. The Plan Administrator is authorized to, with the consent of the Prepetition Secured Parties, retain professionals and paraprofessionals to assist with his duties under the Plan. Except as otherwise provided the Plan, the Plan Administrator and his Professionals shall be compensated at their respective standard hourly rates (subject to any negotiated discounts) for time spent administering the implementation of the Plan and the resolution of objections to Claims, if any are asserted, without further motion or application to the Bankruptcy Court, [until such time as the Prepetition Credit Agreement Secured Claims are paid in full, to review and approval of the DIP Agent and the Prepetition Agent. Compensation to the Plan Administrator and his professionals, shall be made (a) first, from the Wind-Down Amount, and (b) thereafter, from the Remaining Assets of the Liquidating Estates.

9. **Information and Reporting.** The Plan Administrator shall provide the Prepetition Secured Parties with a monthly report including a summary of all actions taken in the prior month.

10. **Other Activities.** The Plan Administrator shall be entitled to perform services for and be employed by third parties; *provided, however*, that such performance or employment affords the Plan Administrator sufficient time to carry out its responsibilities as Plan Administrator.

11. **Exculpation.** The Plan Administrator, the PA Firm or its affiliates, and their representatives (the “PA Protected Parties”) shall not have or incur any liability to any third party, including any Holder of a Claim or Interest, for any act taken or omission made in connection with or related to his performance of the duties conferred upon him by the Plan and any orders of the Bankruptcy Court, except to the extent an act is finally determined to be the result of willful misconduct, or fraud. The Plan Administrator shall be deemed a judicial officer for purposes of immunity from civil action. No Holder of a Claim or Interest or representative thereof shall have or pursue any Cause of Action against the Plan Administrator or his representatives for taking any action in accordance with the Plan, to implement the provisions of the Plan or any order of the Bankruptcy Court. In all respects the Plan Administrator and the PA Protected Parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan; *provided, however*, that the foregoing exculpation shall not apply to any act of willful misconduct or fraud. No provision of this Agreement or the Plan shall require the Plan Administrator to expend or risk his own funds or those of the PA Firm or otherwise incur any financial liability in the performance of any of its duties as Plan Administrator hereunder or under the Plan, or in the exercise of any of its rights or powers, if the Plan Administrator shall have reasonable grounds for believing that repayment of funds or adequate indemnity or security satisfactory to the Plan Administrator against such risk or liability is not reasonably assured to the Plan Administrator. For the avoidance of doubt, the Plan Administrator shall not be required to rely on the security, reimbursement or indemnity of the PA Firm, its affiliates or their respective insurers in determining whether the assurances described in the preceding sentence are available.

12. **Indemnification.** The Liquidating Debtors shall, to the fullest extent permitted by applicable law, indemnify and hold harmless the Indemnified Parties and the PA Protected Parties, from and against any and all liabilities, losses, damages, claims, costs, and expenses, including, but not limited to, attorneys’ fees and costs, arising out of or due to the implementation or administration of the Plan or the discharge of their duties hereunder or otherwise (the “Related Matters”), except those acts or omissions that are finally determined to have arisen out of such party’s fraud or willful misconduct. In the event that, at any time whether before or after termination of this Agreement, as a result of or in connection with this Agreement, any PA Protected Party is required to produce any of its personnel (including former employees) for examination, deposition or other written, recorded or oral presentation, or any PA Protected Party is required to produce or otherwise review, compile, submit, duplicate, search for, organize or report on any material within such PA Protected Party’s possession or control pursuant to a subpoena or other legal (including administrative) process, the PA Protected Party shall be reimbursed by the Liquidating Debtors for its out of pocket expenses, including the reasonable fees and expenses of its counsel, and will be compensated by the Plan Administrator for the time expended by its personnel based on such personnel’s then current hourly rate.

13. **Resignation; Replacement, or Termination.** From and after the Effective Date the Plan Administrator or his successor shall continue to serve in his capacity as the sole officer,

director, and responsible person of the Liquidating Debtors through the earlier of (a) the date the Liquidating Debtors are dissolved in accordance with the Plan; (b) the date the Bankruptcy Cases are closed; and (c) the date the Plan Administrator resigns. The Plan Administrator may resign by giving written notice of his resignation to the Bankruptcy Court. In the event that the Plan Administrator resigns or is terminated or is unable to serve, a successor shall be appointed by the Prepetition Secured Parties. The removed Plan Administrator shall be compensated for services rendered during a transition to a new Plan Administrator, subject to the approval of the Prepetition Secured Parties, which shall not be unreasonably withheld.

14. **Investments.** All Cash held by the Plan Administrator in accounts or otherwise shall be invested in accordance with Section 345 of the Bankruptcy Code or as permitted by a Final Order of the Bankruptcy Court.

15. **Notices.** Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile, addressed as follows or to such other address as any party shall have given notice of pursuant hereto:

In the case of the Plan Administrator:

Gary Barton  
**ALVAREZ & MARSAL NORTH AMERICA, LLC**  
700 Louisiana Street, Suite 3300  
Houston, Texas 77002  
Email: [gbarton@alvarezandmarsal.com](mailto:gbarton@alvarezandmarsal.com)  
Phone: 713-571-2400  
Facsimile: 713-547-3697

In the case of the Liquidating Debtors:

**HAYNES AND BOONE, LLP**  
Patrick L. Hughes  
Texas State Bar No. 10227300  
[patrick.hughes@haynesboone.com](mailto:patrick.hughes@haynesboone.com)  
Martha Wyrick  
Texas State Bar No. 24101606  
[martha.wyrick@haynesboone.com](mailto:martha.wyrick@haynesboone.com)  
1221 McKinney Street, Ste. 2100  
Houston, Texas 77010  
Telephone: (713) 547-2000  
Facsimile: (713) 547-2600

-AND-

**YOUNG CONAWAY STARGATT & TAYLOR, LLP**

Edmon L. Morton  
Delaware State Bar No. 3856  
Kenneth J. Enos  
Delaware State Bar No. 4544  
Elizabeth S. Justison  
Delaware State Bar No. 5911  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

16. **Jurisdiction.** The Bankruptcy Court shall have the continuing and exclusive jurisdiction to interpret and enforce this Agreement and to determine all disputes arising hereunder.

17. **Invalidity.** In the event that any one or more of the provisions contained the Plan shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

18. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, and which together shall constitute a single instrument.

19. **Entire Agreement.** This Agreement is the entire agreement between the parties and supersedes all prior agreements of the parties with respect to the subject matter hereof.

20. **Plan Controls in Event of Conflict.** In the event of a conflict between the terms of this Agreement and the Plan, the provisions of the Plan and the Confirmation Order entered in connection therewith shall control.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

**PLAN ADMINISTRATOR**

**ALVAREZ & MARSAL NORTH AMERICA, LLC**

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By: Gary Barton  
Title: Senior Director

**-AND-**

**FAIRWAY ENERGY, LP,  
By FAIRWAY ENERGY GP, LLC, its  
Sole general partner, as sole member of  
FAIRWAY PARTNERS, LLC**

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By: Robert M. Flavin  
Title: Chief Financial Officer

EXHIBIT B

WIND DOWN BUDGET

	DIP Budget					Wind-Down Budget							
	29-Apr-19	05-May-19	12-May-19	19-May-19	26-May-19	03-Jun-19	10-Jun-19	17-Jun-19	24-Jun-19	01-Jul-19	08-Jul-19	15-Jul-19	22-Jul-19
<b>Cash Receipts</b>													
Contracted Revenue													
Magellan Refund													
<b>Leases</b>													
Lease Payments	150,000												
<b>Operating Costs</b>													
Salaries & Wages	18,000	224,239	19,000	28,720	19,000	45,807							
Board Expenses	72,000	50,359	19,496	19,496	19,496	209,333							
SG&A	19,496	21,134	46,984	46,984	46,984	28,110							
Operating Expenses	28,110												
Capital Expenditures													
Property Taxes													
USL Admin/Cure Costs													
Other Cure Costs													
Non-Professional Admin/Unsecured Claims													
<b>Restructuring Costs</b>													
Haynes and Boone LLP				300,000									
Haynes and Boone LLP				50,000									
Price Legal				100,000									
Young Conaway				40,000									
Prime Clerk													
BDQ USA, LLP													
US Trustee Fees	40,000												
White & Case LLP				400,000									
Fox Rothschild LLP				15,000									
<b>Net Expense</b>	<b>(\$328,607)</b>	<b>(\$295,731)</b>	<b>(\$85,360)</b>	<b>(\$1,000,201)</b>	<b>(\$85,360)</b>	<b>(\$433,310)</b>	<b>\$0</b>	<b>(\$387,500)</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$377,500)</b>	<b>\$0</b>	<b>(\$560,000)</b>
Beginning Account Balance	\$1,802,760	\$72,177	\$1,276,446	\$1,190,966	\$190,765	105,285	180,081	1,479,008	1,479,008	1,111,508	1,111,508	734,008	734,008
2018-1 Incremental Loan Repay		1,500,000				2,000,000							
Cash Proceeds Funding													
DIP Cash Int. Payments													
Ending Account Balance	<b>\$72,177</b>	<b>\$1,276,446</b>	<b>\$1,190,966</b>	<b>\$190,765</b>	<b>\$105,285</b>	<b>(\$150,081)</b>	<b>\$0</b>	<b>\$1,479,008</b>	<b>\$1,479,008</b>	<b>\$1,111,508</b>	<b>\$1,111,508</b>	<b>\$734,008</b>	<b>\$144,008</b>
<b>Cumulative DIP Funding</b>	<b>\$18,432,000</b>	<b>\$19,932,000</b>	<b>\$19,932,000</b>	<b>\$19,932,000</b>	<b>\$19,932,000</b>	<b>\$21,932,000</b>							
<b>Cumulative Cash Funding</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$8,000,000</b>	<b>\$8,000,000</b>	<b>\$8,000,000</b>	<b>\$8,000,000</b>	<b>\$8,000,000</b>	<b>\$8,000,000</b>
<b>Total Cumulative Funding</b>	<b>\$18,432,000</b>	<b>\$19,932,000</b>	<b>\$19,932,000</b>	<b>\$19,932,000</b>	<b>\$19,932,000</b>	<b>\$21,932,000</b>	<b>\$21,932,000</b>	<b>\$29,932,000</b>	<b>\$29,932,000</b>	<b>\$29,932,000</b>	<b>\$29,932,000</b>	<b>\$29,932,000</b>	<b>\$29,932,000</b>
DIP Interest Exp.	97,546	27,853	67,027	67,027	67,027	69,572							
Other Interest Exp.	424,544	117,489	267,384	267,384	267,384	267,384							
Cumulative Int. Exp.	6,844,545	6,987,849	7,324,350	7,660,871	7,997,382	8,336,439							

**Footnotes:**

(a) Fairway Energy paid Magellan for work Magellan performed to assist Fairway Energy to connect at Corcus Junction. The project came in under budget. Magellan is obligated to reduce approximately \$1.5MM of the cost of their work to complete.

(b) Reflects the monthly cost of remaining current on existing contractual covenants. The lease payment shown for the month of June may not be required if the closing occurs before the end of May.

(c) Post-transaction SG&A is assumed to be zero as newco retains responsibility for remaining personnel, IT systems, and record storage.

(d) April 1st SG&A expense assumes approximately \$65K for renewal of certain insurance policies for an additional 3 months. Premium could be refunded for any unused portion.

(e) The last week of May includes an approximate \$205K payment for a 6 year D&O run-out policy.

(f) KERP amount assumed to be paid in accordance with court order.

(g) Payment of 2017 and 2018 property taxes, assumed to be approximately \$25K and \$4.8 million, respectively, and an estimate for penalties and interest amounts due.

(h) Accounting fees related to the DIP as of 6/30/19.

(i) Paper billable fee @ 2% of bid.

(j) Timeline to Plan Confirmation and Effective Date dependent on court schedule and any objections received.