

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

In re: ) Chapter 11  
)  
FORESIGHT ENERGY LP, *et al.*, ) Case No. 20-41308-659  
)  
Debtors. ) (Jointly Administered)  
)

**SUMMARY OF SECOND AMENDED JOINT  
CHAPTER 11 PLAN AND NOTICE OF HEARING TO  
CONSIDER CONFIRMATION OF PLAN OF REORGANIZATION**

**TO: ALL HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS  
AND PARTIES IN INTEREST IN THE ABOVE-CAPTIONED CHAPTER 11 CASES**

**PLEASE TAKE NOTICE THAT:**

1. On May 20, 2020, Foresight Energy LP and its debtor affiliates, as debtors and debtors in possession (collectively, the “Debtors”), filed the *Second Amended Joint Chapter 11 Plan of Reorganization of Foresight Energy LP and its Affiliated Debtors* [Docket No. 455] (as amended, modified, or supplemented from time to time, the “Plan”), and a disclosure statement for the Plan [Docket No. 456] (as amended, modified, or supplemented from time to time, the “Disclosure Statement”)<sup>1</sup> pursuant to sections 1125 and 1126(b) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). On May 20, 2020, the United States Bankruptcy Court for the Eastern District of Missouri (the “Bankruptcy Court”) entered an order approving the Disclosure Statement as having adequate information under section 1125 of the Bankruptcy Code [Docket No. 463].

2. Copies of the Plan and the Disclosure Statement may be obtained free of charge by visiting the website maintained by the Debtors’ voting agent, Prime Clerk LLC (the “Voting Agent”), at <https://cases.primeclerk.com/foresightenergy>. Copies of the Plan and Disclosure Statement may also be obtained by calling the Voting Agent at 646-998-7132 (international); 877-720-6580 (domestic, toll free), or sending an electronic mail message to the Voting Agent at [ForesightEnergyInfo@PrimeClerk.com](mailto:ForesightEnergyInfo@PrimeClerk.com). A chart summarizing the treatment provided by the Plan to each class of Claims and Interests is included in Annex A.

3. Only Holders of First Lien Facility Claims (Class 3), Second Lien Notes Claims (Class 4), and General Unsecured Claims (Class 5) are entitled to vote to accept or reject the Plan. All other classes of Claims or Interests are either presumed to accept or deemed to reject the Plan.

---

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or Disclosure Statement, as applicable.

4. On or before May 22, 2020, the Debtors commenced solicitation of votes to accept the Plan from the Holders of Claims in Class 3, Class 4, and Class 5, each of record as of May 18, 2020. **The deadline for the submission of votes to accept or reject the Plan is at 4:00 p.m. (prevailing Central Time) on June 16, 2020, unless such time is extended by the Debtors.**

### **Confirmation Hearing**

5. A hearing to consider confirmation of the Plan, and any objections thereto, will be held on **June 23, 2020, at 10:00 a.m. (prevailing Central Time)** before the Honorable Kathy A. Surratt-States, United States Bankruptcy Judge, at the Thomas F. Eagleton U.S. Courthouse, 111 S. 10th Street, 7th Floor – North Courtroom, St. Louis, Missouri 63102, or as soon thereafter as counsel may be heard (the “Confirmation Hearing”).

6. The Confirmation Hearing may be adjourned from time to time without further notice other than an announcement of the adjourned date or dates in open court or at the Confirmation Hearing, and notice of such adjourned date(s) will be available on the electronic case filing docket and the Debtors’ website at <https://cases.primeclerk.com/foresightenergy>.

7. Any objections to the Plan must (a) be in writing; (b) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (c) state the legal and factual basis for and nature of any objection; (d) conform to the Federal Rules of Bankruptcy Procedure and the *Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the Eastern District of Missouri*; and (e) be filed with the Bankruptcy Court, together with proof of service, and served on the following parties so as to be received by **no later than June 19, 2020, at 4:00 p.m. (prevailing Central Time)** (the “Objection Deadline”):

- i. the Debtors, c/o Foresight Energy LP, One Metropolitan Square, 211 North Broadway, Suite 2600, St. Louis, Missouri 63102 (Attn: Cody E. Nett, Esq.);
- ii. counsel to the Debtors, (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019-6064 (Attn: Paul M. Basta, Esq., Alice Belisle Eaton, Esq., and Alexander Woolverton, Esq.), and (b) Armstrong Teasdale LLP, 7700 Forsyth Boulevard, Suite 1800, St. Louis, Missouri 63105 (Attn: Richard W. Engel, Jr., Esq., and John G. Willard, Esq.);
- iii. counsel to the Ad Hoc First Lien Group, Akin Gump Strauss Hauer & Feld LLP, 1 Bryant Park, New York, NY 10036 (Attn: Ira Dizengoff, Esq., and Brad Kahn, Esq.);
- iv. counsel to the Ad Hoc Crossover Group, Milbank LLP, 55 Hudson Yards, New York, New York 10001 (Attn: Dennis Dunne, Esq., and Parker Milender, Esq.);

- v. counsel to the Official Committee of Unsecured Creditors, Whiteford Taylor Preston LLP, 3190 Fairview Park Drive, Suite 800, Falls Church, VA 22042 (Attn: Christopher A. Jones, Esq.); and
- vi. the Office of the United States Trustee for the Eastern District of Missouri (the “U.S. Trustee”), 111 South 10th Street, Suite 6353, St. Louis, Missouri 63102 (Attn: Carole Ryczek, Esq.).

**IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT, IT WILL BE BINDING ON ALL OF THE DEBTORS’ CREDITORS AND INTEREST HOLDERS. FAILURE TO FILE A TIMELY OBJECTION TO THE PLAN OR, WITH RESPECT TO THE RELEASES SET FORTH IN ARTICLE VIII.D OF THE PLAN, TO TIMELY OPT OUT VIA BALLOT OR OPT-OUT NOTICE, AS APPLICABLE, WILL RESULT, IF THE PLAN IS CONFIRMED, IN THE APPLICATION OF THE PROVISIONS SET FORTH ON ANNEX A, INCLUDING THE RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS CONTAINED THEREIN, TO EACH OF THE DEBTORS’ CREDITORS AND INTEREST HOLDERS.**

**UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AT THE CONFIRMATION HEARING.**

Dated: May 22, 2020  
St. Louis, Missouri

Respectfully submitted,

ARMSTRONG TEASDALE LLP

/s/ Richard W. Engel, Jr.

---

Richard W. Engel, Jr. (MO 34641)  
John G. Willard (MO 67049)  
Kathryn R. Redmond (MO 72087)  
7700 Forsyth Boulevard, Suite 1800  
St. Louis, Missouri 63105  
Tel: (314) 621-5070  
Fax: (314) 621-5065  
Email: [rengel@atllp.com](mailto:rengel@atllp.com)  
[jwillard@atllp.com](mailto:jwillard@atllp.com)  
[kredmond@atllp.com](mailto:kredmond@atllp.com)

- and -

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Paul M. Basta (admitted *pro hac vice*)  
Alice Belisle Eaton (admitted *pro hac vice*)  
Alexander Woolverton (admitted *pro hac vice*)  
1285 Avenue of the Americas  
New York, New York 10019  
Tel: (212) 373-3000  
Fax: (212) 757-3990  
Email: [pbasta@paulweiss.com](mailto:pbasta@paulweiss.com)  
[aeaton@paulweiss.com](mailto:aeaton@paulweiss.com)  
[awoolverton@paulweiss.com](mailto:awoolverton@paulweiss.com)

*Counsel to the Debtors and Debtors in Possession*

**Annex A**

**Selected Plan Provisions**

**Summary of Plan Treatment**

The following chart summarizes the treatment provided by the Plan to each class of Claims against and Interests in the Debtors, and indicates the voting status of each class.

<b>Class</b>	<b>Claim or Interest</b>	<b>Treatment</b>	<b>Impaired or Unimpaired</b>	<b>Entitlement to Vote</b>	<b>Approx. Percentage Recovery</b>
1	Other Secured Claims	On the Effective Date, except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, in full and final satisfaction, compromise, settlement, release and discharge of and in exchange for each Allowed Other Secured Claim, each such Holder shall receive, at the option of the applicable Debtor, with the consent of the Required First Lien Lenders: (i) Reinstatement of its Claims; (ii) payment in full in Cash of the unpaid portion of its Allowed Other Secured Claim on the Effective Date or as soon thereafter as reasonably practicable (or if payment is not then due, then such Allowed Other Secured Claim shall be paid in accordance with its terms); or (iii) the collateral securing its Allowed Other Secured Claim on the later of the Effective Date and the date such Other Secured Claims becomes an Allowed Claim or as soon thereafter as reasonable practicable.	Unimpaired	No (Presumed to Accept)	100%
2	Other Priority Claims	Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, in full and final satisfaction, compromise, settlement, release and discharge of and in exchange for each Allowed Other Priority Claim, each such Holder shall receive payment in full, in Cash, of the unpaid portion of its Allowed Other Priority Claim on the Effective Date or as soon thereafter as reasonably practicable (or, if payment is not then due, such Allowed Other Priority Claim shall be paid in accordance with its terms) or pursuant to such other terms as may be agreed to by the Holder of an Allowed Other Priority Claim and the Debtors.	Unimpaired	No (Presumed to Accept)	100%
3	First Lien Facility	On the Effective Date, in full and final satisfaction, compromise, settlement, release,	Impaired	Yes	12.43% <sup>1</sup>

<sup>1</sup> Without accounting for any First Lien Accrued Adequate Protection Payments (as defined in the DIP Orders).

Class	Claim or Interest	Treatment	Impaired or Unimpaired	Entitlement to Vote	Approx. Percentage Recovery
	Claims	and discharge of and in exchange for the First Lien Facility Claims, each Holder of an Allowed First Lien Facility Claim shall receive its Pro Rata share of 92.75% of the New Common Equity, subject to the Full Equity Dilution.			
4	Second Lien Notes Claims	On the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for the Second Lien Notes Claims, each Holder of an Allowed Second Lien Notes Claim shall receive its Pro Rata share of 7.25% of the New Common Equity, subject to the Full Equity Dilution.	Impaired	Yes	1.74%
5	General Unsecured Claims	<p><i>If Class 5 Accepts the Plan:</i> If Class 5 votes to accept the Plan as to all of the Debtors, then in full satisfaction, release and discharge of and in exchange for each General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive at its option, either: (a) its Pro Rata share of \$1.5 million in Cash or (b) other less favorable treatment agreed to by the Holder.</p> <p><i>If Class 5 Rejects the Plan:</i> If Class 5 votes to reject the Plan with respect to any Debtor, then Holders of Allowed General Unsecured Claims shall not be entitled to receive any distribution under the Plan.</p>	Impaired	Yes	3.82% or 0%
7	Intercompany Claims	On the Effective Date, each Intercompany Claim shall be Reinstated, cancelled, or otherwise settled to the extent determined to be appropriate by the Debtors or the Reorganized Debtors, as applicable, with the consent of the Required First Lien Lenders.	Impaired or Unimpaired	No (Presumed to Accept or Deemed to Reject)	100% or 0%
8	Intercompany Interests	On the Effective Date, each Intercompany Interest shall be Reinstated, cancelled, or otherwise settled to the extent determined to be appropriate by the Debtors or the Reorganized Debtors, as applicable, with the consent of the Required First Lien Lenders.	Impaired or Unimpaired	No (Presumed to Accept or Deemed to Reject)	100% or 0%

Class	Claim or Interest	Treatment	Impaired or Unimpaired	Entitlement to Vote	Approx. Percentage Recovery
9	Interests in FELP and Interests in GP LLC	On the Effective Date, all Interests in GP LLC and all Interests in FELP shall be cancelled and discharged and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and each Holder of such Interests shall not be entitled to receive any distribution under the Plan on account of such Interests.	Impaired	No (Deemed to Reject)	0%

**Release, Injunction, and Related Provisions**

Please be advised that the Plan contains certain release, exculpation, and injunction provisions substantially as follows:

**Relevant Definitions**

“***Exculpated Claim***” means any Released Claim, Cause of Action or any claim related to any act or omission derived from, based upon, related to or arising from the Debtors’ in or out-of-court prepetition restructuring efforts, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation or Filing of the Disclosure Statement, the Plan or any contract, instrument, release or other agreement or document (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with any of the foregoing, including: (a) the Plan, (b) the Disclosure Statement, (c) the Confirmation Order, (d) the DIP Facility, (e) the Exit Facility Credit Agreement, (f) the Exit Facility Backstop Agreement, (g) the New Organizational Documents, (h) the Restructuring Support Agreement (including the DIP Backstop Agreement), (i) the Management Incentive Plan, and (j) any Schedule of Rejected Executory Contracts and Unexpired Leases (items (d) through (j) hereof, as may be amended from time to time, the “***Restructuring Documents***”), or any other agreement or ancillary document contemplated by the Plan; provided, however, the foregoing shall not be deemed to release, affect or limit any of the rights and obligations of the Released Parties from, or exculpate the Released Parties with respect to, any of the Released Parties’ obligations or covenants arising under the Restructuring Documents and any contracts, instruments, releases and other agreements or documents delivered in connection with or contemplated by, the foregoing.

“***Released Parties***” means: (i) the Debtors and the Reorganized Debtors; (ii) the Debtors’ and the Reorganized Debtors’ respective boards of directors and the members thereof; (iii) the DIP Agent; (iv) the DIP Lenders; (v) the First Lien Agents; (vi) the Consenting First Lien Lenders; (vii) the Second Lien Indenture Trustee; (viii) the Consenting Second Lien Noteholders; (ix) the Backstop Parties; (x) the Ad Hoc First Lien Group; (xi) the Ad Hoc Crossover Group; (xii) Javelin Global Commodities (UK) Ltd.; (xiii) Uniper Global Commodities UK Limited; and



(xiv) with respect to each of the foregoing Entities in clauses (i) through (xiii), each such Entity and its Related Persons.

“**Releasing Parties**” means: (a) any Released Party; (b) all Holders of Claims or Interests that are deemed to accept the Plan; (c) all Holders of Claims or Interests who either (i) vote to accept or (ii) receive or are deemed to receive a Ballot but abstain from voting on the Plan and do not elect on their Ballot to opt-out of the releases granted pursuant to Article VIII.D of the Plan; (d) all Holders of Claims or Interests entitled to vote who vote to reject the Plan that do not elect on their Ballot to opt-out of the release granted pursuant to Article VIII.D of the Plan; (e) Holders of Interests who do not opt-out of the release granted pursuant to Article VIII.D of the Plan; (f) all other Holders of Claims or Interests to the extent permitted by law; and (g) with respect to the foregoing clauses (a) through (f), each such Entity and its Related Persons.

“**Reorganized Debtors**” means all Debtors as reorganized pursuant to the Confirmation Order upon or after the Effective Date pursuant to the Plan, including any transferee thereof, by entity or asset transfer, merger, consolidation or otherwise, including in connection with any Restructuring Transaction, including, without limitation, Reorganized Foresight.

“**Required First Lien Lenders**” means, as of the date of determination, Consenting First Lien Lenders holding in excess of 60% of the aggregate principal amount of First Lien Facility Claims held by all Consenting First Lien Lenders.

“**Required Second Lien Noteholders**” means, as of the date of determination, Consenting Second Lien Noteholders holding in excess of 50% of the aggregate principal amount of Second Lien Notes Claims held by all Consenting Second Lien Noteholders.

## **ARTICLE VIII OF THE PLAN** **RELEASE, INJUNCTION, AND RELATED PROVISIONS**

### **A. *Discharge of Claims and Termination of Interests***

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument or other agreement or document created pursuant to the Plan, including the Plan Supplement documents, the distributions, rights and treatment that are provided in the Plan shall be in complete satisfaction, discharge and release, effective as of the Effective Date, of Claims and Causes of Action of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, whether known or unknown, against liabilities of, liens on, obligations of, rights against, and interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in section 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not the Holder of such a Claim has accepted the Plan. Any default or “event of default” by the Debtors or Affiliates with respect to any Claim or Interest that existed immediately before or on account of the Filing of the Chapter 11 Cases

shall be deemed cured (and no longer continuing) as of the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims subject to the Effective Date occurring.

**B. *Release of Liens***

Except as otherwise specifically provided in the Plan, the Confirmation Order or the Exit Facility Documents (including in connection with any express written amendment of any mortgage, deed of trust, Lien, pledge, or other security interest under the Exit Facility Documents), on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released, settled, compromised, and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtors and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors. In addition, on or after the Effective Date, at the expense the Reorganized Debtors, the DIP Agent, the First Lien Agents, and the Second Lien Indenture Trustee shall execute and deliver all documents reasonably requested by the Debtors, the Reorganized Debtors or the Exit Facility Agent to evidence the release of such mortgages, deeds of trust, Liens, pledges and other security interests (including as required under the laws of other jurisdictions for non-U.S. security interests) and shall authorize the Reorganized Debtors to file UCC-3 termination statements (to the extent applicable) with respect thereto.

**C. *Releases by the Debtors***

Pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, including the services of the Released Parties to facilitate the expeditious reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan, effective as of the Effective Date and to the fullest extent permitted by applicable law, the Debtors, the Reorganized Debtors, their Estates, and any Person seeking to exercise the rights of the Estates, including any successor to the Debtors and any estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released, waived, discharged, and acquitted the Released Parties and their respective property from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or fixed, matured or unmatured, existing or hereafter arising, in law, at equity or otherwise, whether for tort, contract, violations of federal or state securities laws or otherwise, including those that any of the Debtors, the Reorganized Debtors, the Estates, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any claim against, or interest in, any Debtor or other Entity, based on or relating to, or in any manner arising from or in connection with, in whole or in part, the Debtors, their

Affiliates, the Estates, the conduct of the Debtors' businesses, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Chapter 11 Cases and any related adversary proceedings, the Reorganized Debtors, the Reorganized Debtors' businesses, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any of the Debtors and any Released Party, the restructuring of claims and Interests prior to or in the Chapter 11 Cases, the First Lien Credit Agreement Documents, the Second Lien Notes Indenture Documents, the negotiation, formulation, preparation, dissemination, or filing of the Restructuring Support Agreement, any of the Restructuring Documents, or any related agreements, term sheets, instruments, or other documents contemplated by the foregoing or appropriate to effectuate the foregoing, the pursuit of Confirmation, the pursuit of the occurrence of the Effective Date of the Plan, and any other act or omission, transaction, agreement, event, or other occurrence related or relating to the foregoing and taking place on or before the Effective Date of the Plan, except for any claim related to an act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted fraud, gross negligence, or willful misconduct (all such claims and liabilities as described herein, collectively, the "*Released Claims*"); provided, nothing in the foregoing shall result in any of the Debtors' or Reorganized Debtors' officers and directors waiving any Claims arising under employment or severance agreements (after giving effect to any modifications contemplated by the Plan) or indemnification Claims against the Debtors, Reorganized Debtors, any of the Debtors' or Reorganized Debtors' insurers, or any rights as beneficiaries of any insurance policies.

Notwithstanding anything to the contrary in the foregoing, the releases set forth in Article VIII.C of the Plan do not release any post-Effective Date obligations of any party or Entity: (1) arising under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the Renegotiated Contracts/Leases; or (2) expressly set forth in and preserved by the Plan, the Plan Supplement, or related documents.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released by the Debtor Release; (3) in the best interests of the Debtors, the Estates, and all Holders of Claims and Interests; (4) fair, equitable and reasonable; (5) given and made after reasonable investigation by the Debtors and after notice and opportunity for hearing; and (6) a bar to any of the Debtors, the Reorganized Debtors, or the Estates asserting any claim or Cause of Action released by the Debtor Release against any of the Released Parties.

**D. *Releases by Holders of Claims and Interests***

Except as otherwise specifically provided in the Plan, for good and valuable consideration, including the services of the Released Parties to facilitate the expeditious reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan, effective as of the Effective Date, each of the Releasing Parties (regardless of whether a Releasing Party is a Released Party) shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released, waived, discharged, and acquitted the Released Parties and their respective property from any and all Released Claims; provided, nothing in the foregoing shall result in any of the Debtors' or Reorganized Debtors' officers and directors waiving any Claims arising under employment or severance agreements (after giving effect to any modifications contemplated by the Plan) or indemnification Claims against the Debtors, Reorganized Debtors, any of the Debtors' or Reorganized Debtors' insurers, or any rights as beneficiaries of any insurance policies.

Notwithstanding anything to the contrary in the foregoing, the releases set forth in Article VIII.D of the Plan do not release any post-Effective Date obligations of any party or Entity arising under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases contained in Article VIII of the Plan, which include, by reference, each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that the releases contained in Article VIII of the Plan are: (1) consensual; (2) essential to the confirmation of the Plan; (3) given in exchange for the good and valuable consideration provided by the Released Parties; (4) a good faith settlement and compromise of the released claims; (5) in the best interests of the Debtors and their Estates; (6) fair, equitable, and reasonable; (7) given and made after due notice and opportunity for hearing; and (8) a bar to any of the Releasing Parties asserting any claim or Cause of Action released pursuant to the releases contained in Article VIII of the Plan against any of the Released Parties.

**E. *Exculpation***

Except as otherwise specifically provided in the Plan, no Released Party shall have or incur, and each Released Party is hereby released and exculpated from, any Exculpated Claim; provided, however, that the foregoing "Exculpation" shall have no effect on the liability of any Entity that results from any such act or omission that is determined by a Final Order to have constituted fraud, gross negligence or willful misconduct.

**F. *Injunction***

Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold or may hold Claims or Interests that have been released, discharged or are subject to exculpation pursuant to Article VIII of the Plan, are permanently enjoined, from

**and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, and/or the Released Parties:**

- i. commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests;**
- ii. enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against such Entities on account of or in connection with or with respect to any such Claims or Interests;**
- iii. creating, perfecting or enforcing any lien or encumbrance of any kind against such Entities or the property or the Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests;**
- iv. asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Holder has filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and**
- v. commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan.**

**Notwithstanding anything to the contrary in the foregoing, the injunction does not enjoin any party under the Plan or under any document, instrument or agreement (including those attached to the Disclosure Statement or included in the Plan Supplement) executed to implement the Plan from bringing an action to enforce the terms of the Plan or such document, instrument or agreement (including those attached to the Disclosure Statement or included in the Plan Supplement) executed to implement the Plan.**